

EXHIBIT 1

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14 Attorneys for Plaintiff Sony Corporation

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 SONY CORPORATION, A Japanese
19 corporation,

20 Plaintiff,

21 vs.

22 VIZIO, Inc.,

23 Defendant.

CASE NO. SA CV08-01135-RGK
(FMOx)

**SONY'S FIRST SET OF
INTERROGATORIES TO
VIZIO**

1 **SONY'S FIRST SET OF INTERROGATORIES TO VIZIO**

2 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff
3 Sony Corporation requests that Defendant Vizio, Inc. respond to the following
4 interrogatories in writing, under oath, and in accordance with the following
5 definitions and instructions, within thirty (30) days from the date of service thereof.

6
7 **DEFINITIONS AND INSTRUCTIONS**

8
9 Each request in Sony's First Set of Interrogatories is subject to and
10 incorporates the following definitions and instructions as used herein:

11 1. "Vizio Product" means any product manufactured, sold, offered for
12 sale, or distributed in, and/or imported into, the United States by Vizio since
13 October 10, 2002 that by itself or in combination with any other product, device, or
14 instrumentality is capable of displaying digital video signals, data or information.
15 The term shall include, but shall not be limited to, the following products: GV42L,
16 GV42L FHDTV10A, GV42L HDTV, GV42L10A, GV42LF, GV46L FHDTV20A,
17 GV46L HDTV, GV47L FHDTV, GV47L FHDTV20A, GV52L FHDTV10A, HDX
18 20L, JV50P HDTV10A, L15, L20, L30, L30e, L30WGEe, L30WGU, L32 HDTV,
19 L37, L37HDTV, L42, L42 HDTV, L6, P4, P42, P42 ED, P42 HD, P42 HDTV, P46,
20 P50 HDM, P50 HDTV20A, SV420XVT, SV420XVT 1A, SV470XVT,
21 SV470XVT1A, V022L, VA19L HDTV10T, VA22LF HDTV10T, VA26L
22 HDTV10T, VECO320L, VF550XVT, VF550XVT 1A, VM60P, VM60P HDTV,
23 VO22L FHDTV10A, VO22LF, VO32L, VO32L HDTV10A, VO37L, VO37L
24 HDTV10A, VO42L, VO42L FHDTV10A, VO47L FHDTV10A, VOJ320F,
25 VOJ320F1A, VOJ370, VOJ370F, VOJ370F, VP322, VP322 HDTV10A, VP42,
26 VP42 HDTV, VP422, VP422 HDTV10A, VP423 HDTV10A, VP50 10A, VP50
27 20A, VP50 HDTV20A, VP503 HDTV10A, VP504 FHDTV10A, VP505XVT1A,
28 VS370, VS420LF, VS420LF1A, VS42L 10A, VS42L FHDTV10A, VS42LF,

1 VU32L, VU32L HDTV10A, VU37L HDTV10A, VU42L 10A, VU42L
2 FHDTV10A, VU42LF, VW22L HDTV10T, VW26L, VW26L HDTV10F, VW32L
3 10A, VW32L 30A, VW32L HDTV10A, VW32L HDTV30A, VW37L 10A,
4 VW37L 20A, VW37L 30A, VW37L 40A, VW37L HDTV10A, VW37L
5 HDTV30A, VW37L HDTV40A, VW42L, VW42L 10A, VW42L FHDTV10A,
6 VW42L HDTV10A, VW42LF, VW46L FHDTV10A, VW46L20A, VW46LF,
7 VW47L 10A, VW47L FHDTV10A, VW47LF, VX20L, VX20L 20A, VX32L,
8 VX32L 20A, VX32L HDTV , VX32L HDTV20A, VX37L, VX37L 10A, VX37L
9 20A, VX37L HDTV, VX37L HDTV10A, VX37L HDTV20A, VX42L, VX42L
10 10A, VX42L HDTV10A, VX52L 10A, VX52L FHDTV10A, VX52LF, VXW20L,
11 VXW20L 10A, VMM26, and VMM26 F201 LCD. In the event that any of Vizio's
12 products have any versions, each version shall be considered a separate Vizio
13 Product.

14 2. "Related Vizio Products" means any device manufactured, sold,
15 offered for sale, or distributed in, and/or imported into, the United States by Vizio
16 that is capable of being connected to or used with any of Vizio Product. "Related
17 Vizio Products" shall include, but shall not be limited to, the following products:
18 Bravo D1, Bravo D2, Bravo HD1, VR1, VR2, VR3, VUR2, VUR5, VUR6, and
19 VUR8.

20 3. "626 patent" means U.S. Patent No. 5,434,626, entitled "Display
21 Apparatus Displaying Operation Menu."

22 4. "577 patent" means U.S. Patent No. 5,583,577, entitled "Caption Data
23 Coding/Decoding Systems And Methods That Includes Key Data Indicating
24 Intermediate Levels Of Attenuation In The Vicinity Of The Caption."

25 5. "542 patent" means U.S. Patent No. 5,684,542, entitled "Video
26 Subtitle Processing System."

27 6. "847 patent" means U.S. Patent No. 5,731,847, entitled "Subtitle
28 Encoding/Decoding Method and Apparatus."

1 7. “‘373 patent” means U.S. Patent No. 5,751,373, entitled “Television
2 function selection method, television receiver and remote commander for television
3 receiver.”

4 8. “‘614 patent” means U.S. Patent No. 6,111,614, entitled “Method And
5 Apparatus For Displaying An Electronic Menu Having Components With Differing
6 Levels Of Transparency.”

7 9. “‘055 patent” means U.S. Patent No. RE 38,055, entitled “Video Data
8 Bus Communication System and Method.”

9 10. “‘468 patent” means U.S. Patent No. RE 40,468, entitled “Video Data
10 Bus Communication System and Method.”

11 11. “‘182 patent” means U.S. Patent No. 6,778,182, entitled “Display
12 Device.”

13 12. “‘472 patent” means U.S. Patent No. 6,661,472, entitled “Channel
14 selection in digital television.”

15 13. “Patents-in-suit” means the ‘626 patent, the ‘577 patent, the ‘542
16 patent, the ‘847 patent, the ‘373 patent, the ‘614 patent, the ‘055 patent, the ‘468
17 patent, the ‘182 patent, the ‘472 patent, and any other patent that Sony may later
18 assert in this action that Vizio infringes.

19 14. “Affirmative Defense” shall refer to each defense asserted by Vizio
20 relating to Sony’s claims against Vizio, including, without limitation, any defenses
21 enumerated in Vizio’s Answer, filed January 26, 2009, or any amendments or
22 supplements thereto.

23 15. “Communication” or “Communications” shall mean, without
24 limitation, any transmittal, conveyance or exchange of a word, statement, fact, thing,
25 idea, Document, instruction, information, demand, question or other information by
26 any medium, whether by written, oral or other means, including but not limited to
27 electronic communications and electronic mail.
28

1 16. "Document" or "Documents" shall have the broadest meaning ascribed
2 to it by Federal Rule of Civil Procedure 34 and Federal Rule of Evidence 1001. The
3 term shall include within its meaning, by way of example and not limitation, any
4 and all accounts, analyses, books, CDs, calendars, commercial paper,
5 communications, correspondence, DVDs, e-mail, films, financial statements, floppy
6 disks, hard disks, inter-office memoranda, invoices, ledgers, letters, licenses, logs,
7 memoranda, microfilms, minutes, notes, notes of conversations, notes of meetings,
8 notes of telephone calls, office communications, photographs, printouts, recordings
9 of conversations (whether written or electronic), reports, schedules, storage tape,
10 task lists, telegrams, telephone bills, videotapes or other video recordings, and any
11 differing versions of the foregoing whether denominated formal, informal or
12 otherwise, as well as copies of the foregoing which differ from the original in any
13 way, including handwritten notations or other written or printed matter. The
14 foregoing specifically includes information stored electronically, whether in a
15 computer database or otherwise, regardless of whether such documents are presently
16 in documentary form or not. A draft or non-identical copy of a Document is a
17 separate Document within the meaning of this term.

18 17. "Identify" when used in reference to:

19 (1) An individual, means to state his or her full name, present or last
20 known residential and business addresses, present or last known position and
21 business affiliation, and if applicable, history of employment of that individual;

22 (2) A firm, partnership, corporation, proprietorship, joint venture,
23 association, or other organization or entity, means to state its full name, present or
24 last known address and place of incorporation or formation and to identify each
25 agent that acted for it with respect to the matters relating to the request or answer;

26 (3) A document, means to state the date, title, if any, subject matter, each
27 author, each addressee or recipient if practicable, and otherwise a general
28 description of the persons to whom the writing was distributed, the production

1 number, and the type of document, *i.e.*, publication, letter, memorandum, book,
2 telegram, chart etc., or some other means of identifying the document, and its
3 present location and custodian;

4 (4) A communication, means to state its date and place, the person(s) who
5 participated in it or who were present during any part of it or who have knowledge
6 about it;

7 (5) A date, means to state the date and set forth the basis for your
8 contention that the date is responsive to the request; and

9 (6) A product, service, or intellectual property, means to state all names
10 and numbers related to the product, service, or intellectual property, and the owner,
11 manufacturer, distributor, licensor, or dealer of the product, service, or intellectual
12 property during the relevant time period and currently. For a product, provide all
13 designations for the product, from the most specific to the most general, including
14 any model numbers or designations, version numbers or designations, and internal
15 numbers or designations.

16 18. The terms "Vizio," "you," "defendant," or "your" shall refer to Vizio,
17 Inc., and includes any entities constituting parents, predecessors, subsidiaries,
18 affiliates, divisions, associated organizations, joint ventures, as well as present and
19 former officers, directors, trustees, employees, staff members, agents, or other
20 representatives, including counsel and patent agents, in any country.

21 19. The term "plaintiff" or "Sony" means Sony Corporation.

22 20. The term "AmTRAN" shall refer to AmTRAN Technology Co., Ltd.,
23 and includes any entities constituting parents, predecessors, subsidiaries, affiliates,
24 divisions, associated organizations, joint ventures, as well as present and former
25 officers, directors, trustees, employees, staff members, agents, or other
26 representatives, including counsel and patent agents, in any country. The term shall
27 include, but shall not be limited to, AmTRAN Logistics, Inc., AseV Display Labs,
28 and AmTRAN Technology Inc.

1 21. The term “person” or “persons” refers to any individual, corporation,
2 proprietorship, association, joint venture, company, partnership or other business or
3 legal entity, including governmental bodies and agencies. The masculine includes
4 the feminine and vice versa; the singular includes the plural and vice versa.

5 22. The terms “any,” “all” and “each” shall each mean and include the
6 other.

7 23. The terms “and” and “or” shall be construed either disjunctively or
8 conjunctively as necessary to bring within the scope of the discovery request all
9 responses that might otherwise be construed to be outside of its scope.

10 24. The use of the singular form of any word includes the plural and vice
11 versa.

12 25. “Thing” refers to any physical specimen or tangible item in your
13 possession, custody or control, including research and development samples,
14 prototypes, productions samples and the like.

15 26. “Referring to,” “relating to,” “concerning” or “regarding” means
16 containing, describing, discussing, embodying, commenting upon, identifying,
17 incorporating, summarizing, constituting, comprising or are otherwise pertinent to the
18 matter or any aspect thereof.

19 27. The term “this action” means the above-captioned action, Sony Corp. v.
20 Vizio, Inc., case number SA CV08-01135-RGK (FMOx).

21 28. The term “license” means any agreement, contract, or arrangement relating
22 to one or more patents.

23 29. The term “superimposed” means displayed over at least one other image
24 such that both the superimposed image (*e.g.*, a caption, a subtitle, a menu, etc.) and the
25 underlying image(s) are seen, at least in part, at once.

26 30. “Level of transparency” means the extent to which a superimposed image
27 blocks out or leaves visible an underlying image or background.
28

1 31. The term "Video Processor" means an integrated circuit that can perform
2 analysis, manipulation, storage, or display of graphical images, graphical signals, or
3 graphical data.

4 32. The term "Graphics Processor" means an integrated circuit that can generate
5 and/or display graphical images such as lines and filled areas, or that can cause or
6 facilitate the generation and/or display of graphical images.

7 33. The term "Dynamic Contrast" means automatically adjusting the contrast
8 based on the picture brightness or luminance and/or dynamically enhancing the black
9 and white levels.

10 34. The term "Source Code" means any software, programming code, or
11 microprocessor instructions. The terms includes but is not limited to all software code,
12 middleware, millicode, firmware, bytecode, compiled executable files, and makefiles.

13 35. The use of a verb in any tense shall be construed as the use of the verb in all
14 other tenses.

15 36. In answering the following Interrogatories, furnish all available information,
16 including information in the possession, custody, or control of any of your attorneys,
17 directors, officers, agents, employees, representatives, associates, investigators or
18 division affiliates, partnerships, parents or subsidiaries, and persons under your control,
19 who have the best knowledge, not merely information known to you based on your own
20 personal knowledge. If you cannot fully respond to the following Interrogatories after
21 exercising due diligence to secure the information requested thereby, so state, and
22 specify the portion of each Interrogatory that cannot be responded to fully and
23 completely. In the latter event, state what efforts were made to obtain the requested
24 information and the facts relied upon that support the contention that the Interrogatory
25 cannot be answered fully and completely; and state what knowledge, information or
26 belief you have concerning the unanswered portion of any such Interrogatory.

27 37. If you are producing Documents in connection with these Interrogatories,
28 electronic records and computerized information must be produced in an intelligible

1 format, together with a description of the system from which they were derived
2 sufficient to permit rendering the records and information intelligible.

3 38. If you are producing Documents in connection with these Interrogatories,
4 selection of Documents from the files and other sources and the numbering of such
5 Documents shall be performed in such a manner as to ensure that the source of each
6 Document may be determined, if necessary.

7 39. If you are producing Documents in connection with these Interrogatories, file
8 folders with tabs or labels or directories of files identifying Documents must be
9 produced intact with such Documents.

10 40. If you are producing Documents in connection with these Interrogatories,
11 Documents attached to each other shall not be separated. All Documents that respond,
12 in whole or in part, to any portion of any request shall be produced in their entirety,
13 including all attachments and enclosures.

14 41. Separately with respect to each piece of information called for by these
15 Interrogatories withheld under a claim of privilege or otherwise, provide an explanation
16 of the claim being asserted and a description of the information withheld in accordance
17 with Fed. R. Civ. P. 26(b)(5).

18 42. If your response to a particular Interrogatory is a statement that you lack the
19 ability to comply with that Interrogatory, you must specify whether the inability to
20 comply is because the particular item or category of information never existed, has been
21 destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in
22 your possession, custody, or control, in which case the name and address of any person
23 or entity known or believed by you to have possession, custody, or control of that
24 information or category of information must be identified.

25 43. The obligation to provide the information sought by these Interrogatories is
26 continuing within the requirement of Fed. R. Civ. P. 26(e).

27
28

1 **INTERROGATORIES**

2 **INTERROGATORY NO. 1:**

3 Identify each Vizio Product using all internal and external model numbers or
4 designations and the product type and size (*e.g.*, 32" LCD television).

5 **INTERROGATORY NO. 2:**

6 For each Vizio Product identified in response to Interrogatory No. 1, describe
7 how, when and by whom (including all entities involved) the Vizio Product was
8 manufactured, sold, offered for sale, or distributed in, and/or imported into, the
9 United States.

10 **INTERROGATORY NO. 3:**

11 Set forth in claim chart form the bases for Vizio's First Affirmative Defense
12 that "it does not infringe, induce infringement of, or contributorily infringe any
13 properly construed, valid claim of . . . the "patents-in-suit."

14 **INTERROGATORY NO. 4:**

15 Set forth the bases for Vizio's Second Affirmative Defense that "one or more
16 of the claims of the patents-in-suit is invalid for failing to meet one or more of the
17 conditions for patentability set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112."

18 **INTERROGATORY NO. 5:**

19 Set forth the bases for Vizio's Third Affirmative Defense that "Sony is barred
20 from recovering damages for failure to provide adequate notice in accordance with
21 35 U.S.C. § 287."

22 **INTERROGATORY NO. 6:**

23 Set forth any bases for the additional affirmative defenses that Vizio reserves
24 the right to assert in its Fifth Affirmative Defense.

25 **INTERROGATORY NO. 7:**

26 For each claim term of the patents-in-suit that Vizio contends or will contend
27 requires construction by the Court, separately state Vizio's proposed construction of
28 each such claim term and set forth all bases for that construction (including any

1 intrinsic or extrinsic evidence on which Vizio relies, or any bases for any contention
2 by Vizio that Sony is estopped or otherwise barred from asserting a particular claim
3 construction).

4 **INTERROGATORY NO. 8:**

5 For each yearly quarter dating back to October 10, 2002, state the total
6 number of units sold, the gross revenue (in U.S. dollars), the net profits (in U.S.
7 dollars), the profit margins (in U.S. dollars), and the costs (in U.S. dollars)
8 associated with each Vizio Product and set forth all bases for your response.

9 **INTERROGATORY NO. 9:**

10 For each of the Patents-in-Suit, identify the reasonable royalty rate that Vizio
11 contends Vizio and Sony would have agreed upon in a hypothetical negotiation and
12 set forth the basis for that contention, including the date on which Vizio contends
13 the hypothetical negotiation would have occurred and Vizio's analysis of any factors
14 that it contends bear on the reasonable royalty rate

15 **INTERROGATORY NO. 10:**

16 Describe when and how (including all persons involved) Vizio first became
17 aware of each of the patents-in-suit.

18 **INTERROGATORY NO. 11:**

19 For each Vizio Product identified in response to Interrogatory No. 1, identify
20 which of the following product features it incorporates: menu displays capable of
21 displaying in more than one color or more than one brightness; menu displays
22 capable of displaying in more than one level of transparency; menu displays capable
23 of displaying a submenu or subordinate menu; the capability to superimpose
24 captions on another image or on a background; the capability to superimpose
25 subtitles on another image or on a background; the capability to securely transfer
26 video data between devices connected to a common bus; Dynamic Contrast; a
27 Digital Visual Interface ("DVI") or a High Definition Multimedia Interface
28

1 (“HDMI”); High-bandwidth Digital Content Protection (“HDCP”) functionality; and
2 the capability of selecting a major and minor channel number.

3 **INTERROGATORY NO. 12:**

4 Separately for each feature identified in Interrogatory No. 11, identify the five
5 Vizio employees most knowledgeable about that feature.

6 **INTERROGATORY NO. 13:**

7 Separately for each Vizio Product identified in response to Interrogatory No.
8 1, identify each integrated circuit incorporated into that product that performs any
9 part of the functions of a Video Processor and/or a Graphics Processor, including the
10 time period during which that integrated circuit was incorporated in the Vizio
11 Product.

12 **INTERROGATORY NO. 14:**

13 Separately for each Vizio Product, identify all digital television standards
14 (e.g., standards relating to Closed Captioning such as EIA-708-B, CEA-708-B, and
15 CEA-708-C, or standards relating to HDCP, such as “High-Bandwidth Digital
16 Content Protection System,” revision 1.3, issued by the Digital Content Protection
17 LLC) with which that product complies or has complied (including the relevant time
18 periods) and describe the manner in which each such standard is or has been
19 implemented.

20 **INTERROGATORY NO. 15:**

21 If Vizio contends that, even if it is found to infringe the asserted claims of the
22 patents-in-suit, its infringement was not willful, set forth all bases for that
23 contention.

24 **INTERROGATORY NO. 16:**

25 Identify all efforts Vizio has made to design around any of the patents-in-suit
26 or to purchase or otherwise acquire any non-infringing alternative to any of the
27 patents-in-suit.
28

1 **INTERROGATORY NO. 17:**

2 If Vizio contends that any conduct of Sony or another in relation to any
3 industry or standards organization has any effect on any claim asserted by Sony or
4 Sony's alleged damages, set forth all bases for that contention.

5 **INTERROGATORY NO. 18:**

6 Identify all industry or standards organizations in which Vizio has
7 participated and for each describe the nature and timing of Vizio's participation.

8
9 DATED: March 23, 2009

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

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11
12
13 By Kevin P.B. Johnson / FOR
14 Kevin P.B. Johnson
15 ATTORNEYS FOR PLAINTIFF
16 Sony Corporation
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1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of
3 eighteen years and not a party to the within action; my business address is Now Legal Service,
1301 W. 2nd Street, Suite 206, Los Angeles, CA 90026.

4 On March 23, 2009, I served true copies of the following document(s) described as

5 **1) SONY'S FIRST SET OF INTERROGATORIES TO VIZIO**

6 **2) SONY'S FIRST SET OF REQUESTS FOR PRODUCTION TO VIZIO**

7 on the parties in this action as follows:

8 **Steven John Corr**

Jones Day

9 555 South Flower Street 50th Floor

10 Los Angeles, CA 90071

213-243-2327

11 Fax: 213-243-2539

12 **[X] BY PERSONAL SERVICE:** I delivered such envelope(s) by hand to the office of the
13 person(s) being served.

14 I declare that I am employed in the office of a member of the bar of this Court at whose
15 direction the service was made.

16 Executed on March 23, 2009, at Los Angeles, CA.


17 
18 Dave Quintana

EXHIBIT 2

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 SONY CORPORATION,) CASE NO. SA CV 08-01135-RGK (FMOx)
12 Plaintiff(s),)
13 vs.) **ORDER FOR JURY TRIAL:**
14 VIZIO, INC.,) **Pretrial Conference: January 10, 2010 at**
15 Defendant(s).) **9:00 a.m.**
16) **Trial Date: January 26, 2010 at 9:00 a.m.**
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28)

18 **UNLESS OTHERWISE ORDERED BY THE COURT, THE FOLLOWING RULES**
19 **SHALL APPLY:**

20 **SCHEDULING**

21 **1. In General**

22 All motions to join other parties or to amend the pleadings shall be filed and served
23 within fifteen (15) days of the date of this order.

24 **2. Motions for Summary Judgment or Partial Summary Judgment**

25 Motions for summary judgment or partial summary judgment shall be filed as soon as
26 practical, however, in no event later than the motion cut-off date.
27
28

1 Pursuant to Local Rule 16-14, the parties in every case must select a settlement
2 procedure. The final meeting with the parties' settlement officer must take place no later than 45
3 days before the Final Pretrial Conference.

4
5 **FINAL PRE-TRIAL CONFERENCE**
6

7 This case has been placed on calendar for a Final Pre-Trial Conference pursuant to
8 Fed.R.Civ.P. 16 and 26. Unless excused for good cause, each party appearing in this action shall
9 be represented at the Final Pre-Trial Conference, and all pre-trial meetings of counsel, by the
10 attorney who is to have charge of the conduct of the trial on behalf of such party.

11 STRICT COMPLIANCE WITH THE REQUIREMENT OF FED.R.CIV.P. 26 AND
12 LOCAL RULES ARE REQUIRED BY THE COURT. Therefore, carefully prepared
13 Memoranda of Contentions of Fact and Law, a Joint Witness List, and Joint Exhibit List shall be
14 submitted to the Court. The Joint Witness List shall contain a brief statement of the testimony
15 for each witness, **what makes the testimony unique** from any other witness testimony, and the
16 time estimate for such testimony. The Joint Exhibit List shall contain any objections to
17 authenticity and/or admissibility to the exhibit(s) and the reasons for the objections.

18 The Memoranda of Contentions of Fact and Law, Witness List and Exhibit List are due
19 twenty-one (21) days before the Final Pre-Trial Conference.

20 If expert witnesses are to be called at trial, each party shall list and identify their
21 respective expert witnesses. Failure of a party to list and identify an expert witness may
22 preclude a party from calling an expert witness at trial. If expert witnesses are to be called at
23 trial, the parties shall exchange at the Final Pre-Trial Conference short narrative statements of
24 the qualifications of the expert and the testimony expected to be elicited at trial. If reports of
25 experts to be called at trial have been prepared, they shall be exchanged at the Final Pre-Trial
26 Conference but shall not substitute for the narrative statements required.

TRIAL PREPARATION FOR JURY TRIAL
MOTIONS, INSTRUCTIONS AND EXHIBITS

THE COURT ORDERS that all counsel comply with the following in their preparation for trial:

1. MOTIONS IN LIMINE

All motions in limine must be filed and served a minimum of forty-five (45) days prior to the scheduled trial date. Each motion should be separately filed and numbered. All opposition documents must be filed and served at least twenty-five (25) days prior to the scheduled trial date. All reply documents must be filed and served at least ten (10) days prior to the scheduled trial date.

All motions in limine will be ruled upon on or before the scheduled trial date and should not be noticed for motion on any date other than the assigned trial date.

2. JURY INSTRUCTIONS/SPECIAL VERDICT FORMS

Thirty-five (35) days before trial, plaintiff shall serve plaintiff's proposed jury instructions and special verdict forms on defendant. Twenty-eight (28) days before trial, defendant shall serve on plaintiff defendant's objections to plaintiff's instructions together with any additional instructions defendant intends to offer. Twenty-one (21) days before trial, plaintiff shall serve on defendant plaintiff's objections to defendant's instructions. Twenty-one (21) days before trial, counsel are ordered to meet and confer to attempt to come to agreement on the proposed jury instructions. The parties shall make every attempt to agree upon the jury instructions before submitting them to the Court. It is expected that counsel will agree on the substantial majority of jury instructions, particularly where patent instructions are involved.

Sixteen (16) days before trial, counsel shall file with the Court a JOINT set of jury instructions on which there is agreement. Defendant's counsel has the burden of preparing the joint set of jury instructions. At the same time each party shall file its proposed jury instructions

1 which are objected to by any other party, accompanied by points and authorities in support of
2 those instructions.

3 When the parties disagree on an instruction, the party opposing the instruction must
4 attach a short statement (one to two paragraphs) supporting the objection, and the party
5 submitting the instruction must attach a short reply supporting the instruction. Each statement
6 should be on a separate page and should follow directly after the disputed instruction.

7 The parties ultimately must submit one document, or if the parties disagree over any
8 proposed jury instructions, three documents. The three documents shall consist of: (1) a set of
9 Joint Proposed Jury Instructions; (2) Plaintiff's Disputed Jury Instructions; and (3) Defendant's
10 Disputed Jury Instructions. Any disputed Jury Instructions shall include the reasons supporting
11 and opposing each disputed instruction in the format set forth in the previous paragraph.

12 The Court directs counsel to use the instructions from the Manual of Model Jury
13 Instructions for the Ninth Circuit where applicable. Where California law is to be applied and
14 the above instructions are not applicable, the Court prefers counsel to use the California Jury
15 Instructions in either BAJI or CACI. If none of these sources is applicable, counsel are directed
16 to use the instructions in Devitt, Blackmar and Wolff, Federal Jury Practice and Instructions.

17 Modifications of instructions from the foregoing sources (or any other form instructions)
18 must specifically state the modification made to the original form instruction and the authority
19 supporting the modification.

20 Each requested instruction shall be set forth in full; be on a separate page; be numbered;
21 cover only one subject or principle of law; not repeat principles of law contained in any other
22 requested instructions; and cite the authority for a source of the requested instruction. In
23 addition to the foregoing, each party shall file with the Courtroom Deputy on the first day of trial
24 a "clean set" of the aforesaid requested duplicate jury instructions in the following form: Each
25 requested instruction shall be set forth in full; be on a separate page with the caption "COURT'S
26 INSTRUCTION NUMBER ___"; cover only one subject or principle of law; and not repeat
27 principles of law contained in any other requested instruction. The "clean set" shall not cite the
28

authority for a source of the requested instruction. Counsel shall also provide the Court with a CD in WordPerfect format containing the proposed jury instructions.

An index page shall accompany all jury instructions submitted to the Court. The index page shall indicate the following:

- the number of the instruction;
- a brief title of the instruction;
- the source of the instruction and any relevant case citation; and
- the page number of the instruction.

EXAMPLE:

<u>NO.</u>	<u>TITLE</u>	<u>SOURCE</u>	<u>PAGE</u>
<u>NO.</u>			
5	Evidence for Limited Purpose	9 th Cir. 1.5	9

During the trial and before argument, the Court will meet with counsel and settle the instructions. Strict adherence to time requirements is necessary for the Court to examine the submissions in advance so that there will be no delay in starting the jury trial. **Failure of counsel to strictly follow the provisions of this section may subject the non-complying party and/or its attorney to sanctions and SHALL CONSTITUTE A WAIVER OF JURY TRIAL in all civil cases.**

3. TRIAL EXHIBITS

Counsel are to prepare their exhibits for presentation at the trial by placing them in binders which are indexed by exhibit number with tabs or dividers on the right side. Counsel shall submit to the Court an original and one copy of the binders. The exhibits shall be in a three-ring binder labeled on the spine portion of the binder as to the volume number and contain an index of each exhibit included in the volume. Exhibits must be numbered in accordance with Fed.R.Civ.P. 16, 26 and the Local Rules.

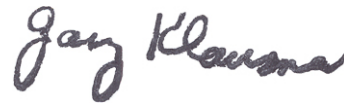
Exhibit list shall indicate which exhibits are objected to, the reason for the objection, and the reason it is admissible. Failure to object will result in a waiver of objection.

The Court requires that the following be submitted to the Courtroom Deputy Clerk on the first day of trial:

- The original exhibits with the Court's exhibit tags shall be stapled to the front of the exhibit on the upper right-hand corner with the case number, case name, and exhibit number placed on each tag. Exhibit tags can be obtained from the Clerk's Office, Room G-8, 312 North Spring Street, Los Angeles, CA 90012.
- One bench book with a copy of each exhibit for use by the Court, tabbed with numbers as described above. (Court's exhibit tags not necessary.)
- Three (3) copies of exhibit lists.
- Three (3) copies of witness lists in the order in which the witness may be called to testify.
- Counsel are ordered to submit a short joint statement of the case seven (7) days before trial that the Court may read to the prospective panel.
- All counsel are to meet not later than ten (10) days before trial and to stipulate so far as is possible as to foundation, waiver of the best evidence rule, and to those exhibits which may be received into evidence at the start of trial. The exhibits to be so received will be noted on the copies of the exhibit lists.

- Counsel may, but need not, submit brief proposed voir dire questions for the jury seven (7) calendar days before the Pretrial Conference. The Court will conduct its own voir dire after considering any proposed voir dire submitted by counsel.
- Any items that have not been admitted into evidence and are left in the courtroom overnight without prior approval, will be discarded.

DATED: April 6, 2009



R. Gary Klausner, Judge
UNITED STATES DISTRICT COURT

EXHIBIT 3

quinn emanuel trial lawyers | san francisco

50 California Street, 22nd Floor, San Francisco, California 94111 | TEL 415-875-6600 FAX 415-875-6700

April 29, 2009

VIA E-MAIL, U.S. MAIL, AND FACSIMILE

James L. Wamsley III, Esq.
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
fax: 216-579-0212

Re: Sony Corporation v. Vizio, Inc.

Dear Jim:

Pursuant to Local Rule 37-1, I write regarding various deficiencies in Vizio's discovery responses.

As an initial matter, Vizio failed to produce any documents along with its responses on the ground that a protective order has not been entered in this case. This is improper. At the very least, Vizio should have produced responsive non-confidential documents with its initial responses and produced its confidential documents on an Outside Attorneys' Eyes Only basis pending entry of a Protective Order.

In response to Sony's Request for Production Nos. 13, 14, 17-26, 43-46, 48-54, 67-81, 83-85, 91-92, 101-104, 110, 124, and 127-28, Vizio states that it will produce documents "only after . . . Vizio has received the consent of any third parties to produce any documents containing confidential information of said third parties." Vizio is not entitled to withhold nonprivileged documents from production on the basis that a third party might regard those documents as confidential. See In re Bankers Trust Co., 61 F.3d 465, 469 (6th Cir. 1995) (documents in possession of responding party are discoverable regardless of third-party ownership); 8A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2210 (2d ed. 2009) ("A party

quinn emanuel urquhart oliver & hedges, llp

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may be required to produce documents and things that it possesses even though they belong to a third person who is not a party to the action.”). Rather, Vizio is required to produce all nonprivileged, responsive documents in its possession, custody, or control. See Fed. R. Civ. P. 36(a). Moreover, Vizio has not even attempted to describe why it believes the withheld information is “confidential,” nor has Vizio provided Sony with a log of the withheld information. Vizio also fails to state whether it has requested permission from any third parties to produce the requested documents and things.

Sony’s Request for Production No. 1 requires Vizio to provide a fully operational exemplar of each of the Vizio Products. Vizio neither objected to this request nor confirmed that it will make any of the accused Vizio Products available for Sony’s inspection. Rather, Vizio responded that it “is willing to meet and confer with Plaintiff.” Sony accepts Vizio’s offer to meet and confer regarding this request. In particular, the parties need to confer regarding the dates, location, and logistical details of the inspection. Sony expects that this inspection will take place within the next 60 days, and that that Vizio will permit Sony to bring its experts, a photographer, and a videographer to the inspection.

With respect to Sony’s Request for Production Nos. 55-57, 64, 82, 106, 125, and 126, Vizio has not confirmed that it will produce any documents or things. Rather, Vizio merely objects to these requests. Vizio is required to produce all nonprivileged, responsive documents and things in its possession, custody, or control. See Fed. R. Civ. Pro. 36(a). Therefore, Vizio’s responses to these requests are deficient.

Interrogatory No. 1 requires Vizio to identify each of the Vizio Products. The list of products that Vizio provided in response to this interrogatory is incomplete. For example, the list does not contain Vizio’s VO22L FHDTV10A, which appears to be one of Vizio’s best-selling products. In addition, the list does not identify any of the following products: VX20L HDTV1A, L32 HDTV, L42 HDTV, P42 ED, P42 HDTV, VP42 HDTV, VP50 HDTV, and VM60P HDTV10A. Vizio should immediately supplement its response to this interrogatory to identify all Vizio Products including, without limitation, those listed above.

Vizio’s response to Sony’s Interrogatory No. 2 is also inadequate. The Interrogatory requires Vizio to describe for each Vizio Product “how, when and by whom (including all entities involved) the Vizio Product was manufactured, sold, offered for sale, or distributed in, and/or imported into, the United States.” Vizio’s response is inadequate because Vizio has not provided *any* information regarding when the products were manufactured or distributed. In addition, despite the fact that publicly available information shows that AmTRAN Logistics, Inc. is directly involved in the importation and distribution of Vizio Products, Vizio has not even mentioned that company in its response. Vizio’s response is also inadequate because it improperly invokes Federal Rule of Civil Procedure 33(d). Given the nature of Interrogatory No. 2, it is simply unimaginable that “the burden of deriving or ascertaining the answer will be substantially the same for either party.” Fed. R. Civ. P. 33(d); see also Ropak Corp. v. Plastikan, Inc., No. 04 C 5322, 2006 WL 1005406, at *5 (N.D. Ill. April 17, 2006) (the responding party has the “obligation of show[ing] that the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served”). This is especially true because the interrogatory seeks information about Vizio’s own products. See Laserdynamics, Inc. v. Asus Computer Int’l, No. 2:06-CV-348, 2009 WL 153161, at *3 (E.D. Tex. Jan. 21, 2009) (“It is implausible for the defendants to contend that the plaintiff stands on

equal footing when it comes to determining how the defendants' own products operate."'). Moreover, even if it were appropriate to rely on Rule 33(d), Vizio failed to identify the production numbers of the documents it is relying on as required by Rule 33(d). See Cambridge Elecs. Corp. v. MGA Elecs., Inc., 227 F.R.D. 313, 322 (C.D. Cal. 2004) ("A party that elects to avail itself of [Rule 33(d)], however, must specify where in the records the answers [can] be found.'). Indeed, as of today, Vizio has failed to produce a single document to Sony.

Sony's Interrogatory No. 3 requires Vizio to "set forth in claim chart form the bases for Vizio's First Affirmative Defense that 'it does not infringe, induce infringement of, or contributorily infringe any properly construed, valid claim of . . . the patents-in-suit.'" Vizio responded that it will not answer this interrogatory until Sony has identified "the asserted claims and the products accused of infringing each of those claims." That response is inadequate because Vizio alleged in its Answer that it does not infringe "any" of the patents-in-suit. Nevertheless, in order to facilitate a proper response to Interrogatory No. 3, and without waiving Sony's right to revise its contentions as discovery continues, Sony presently contends that each and every Vizio Product infringes at least the following claims of the patents-in-suit:

- '626 patent: claims 1, 3-4, 6-7, 9-10, 14, 17-24, and 29-33.
- '373 patent: claims 1-13.
- '614 patent: claims 1-4, and 6-7.
- '577 patent: claims 13, 15, 19, 20, 27, and 28.
- '542 patent: claims 6 and 11.
- '847 patent: claims 11, 12, 16, 27, 28, 33, 34, 35, and 37-41.
- '055 patent: claims 41-54 and 61-66.
- '468 patent: claims 41-45.
- '182 patent: claims 1-6.
- '472 patent: claims 1-18.

Now that Sony has provided Vizio with the requested information, Sony expects that Vizio will supplement its response within 30 days of the date of this letter.

Interrogatory No. 7 requires Vizio to set forth its proposed constructions of any claim term that Vizio contends requires construction by the Court. Vizio has objected that the interrogatory is "premature, overbroad, and unduly burdensome" because Sony has not yet identified its asserted claims and the products accused of infringement. Now that Sony has provided Vizio with that information, Sony expects that Vizio will supplement its response within 30 days of the date of this letter.

Vizio's response to Interrogatory No. 8, which requires Vizio to identify sales information for its products, is inadequate because it does not provide *any* responsive information. Vizio's reliance on Rule 33(d) is improper, especially because the interrogatory seeks information about Vizio's own products. See Laserdynamics 2009 WL 153161, at *3 ("It is implausible for the defendants to contend that the plaintiff stands on equal footing when it comes to determining how the defendants' own products operate.'). In addition, Vizio has failed to identify the production numbers of the responsive records as required by Rule 33(d). See Cambridge Elecs., 227 F.R.D.

at 322 (“A party that elects to avail itself of this option, however, must specify where in the records the answers [can] be found.”) Indeed, as of today, Vizio has not produced any documents to Sony.

Interrogatory No. 10 requires Vizio to “[d]escribe when and how (including all persons involved) Vizio first became aware of each of the patents-in-suit.” Vizio’s response with respect to the ‘373, ‘472, and ‘468 patents is deficient because Vizio has not provided any information regarding how it first became aware of the patents and who was involved.

Interrogatory No. 11 requires Vizio to identify for each Vizio Product which of eleven features it incorporates. Vizio has not identified even a single product, and instead invokes Rule 33(d). Once again, Rule 33(d) is an improper way of responding to this interrogatory, which requests information regarding Vizio’s own products. See Laserdynamics 2009 WL 153161, at *3; Cambridge Elecs., 227 F.R.D. at 322. In Sony v. Westinghouse, 2:08-cv-03934-RGK-FMO (C.D. Cal.), Sony propounded the same Interrogatory No. 11 against Westinghouse. After Westinghouse provided the same kind of deficient answer that Vizio has provided, Sony moved to compel. On February 11, 2009, Magistrate Judge Olguin found that Westinghouse’s response was deficient and ordered Westinghouse to supplement its response. For your convenience, a copy of Judge Olguin’s order is attached to this letter.

Interrogatory No. 12 requires Vizio to identify, for each of eleven technological features, its five most knowledgeable employees. Vizio has objected that identifying five individuals is “overly burdensome,” and instead has identified only three employees, asserting that they are the three most knowledgeable employees regarding each of the eleven features. Sony expects Vizio to identify two additional witnesses, as required by the interrogatory. If Vizio does not do so, Sony will seek to preclude any unidentified witness from testifying or submitting a declaration regarding any of the eleven identified features.

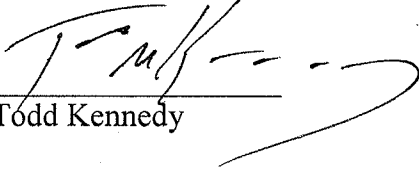
Interrogatory No. 13 requires Vizio to identify the Video Processors and Graphics Processors used in each Vizio Product. Vizio has failed to identify even a single processor in its response. Vizio instead invokes Rule 33(d) without identifying any documents, which is not an appropriate response to the interrogatory. See Laserdynamics 2009 WL 153161, at *3; Cambridge Elecs., 227 F.R.D. at 322.

Interrogatory No. 14 requires Vizio to identify separately for each Vizio Product “all digital television standards (e.g., standards relating to Closed Captioning such as EIA-708-B, CEA-708-B, and CEA-708-C, or standards relating to HDCP, such as ‘High-Bandwidth Digital Content Protection System,’ revision 1.3, issued by the Digital Content Protection LLC) with which that product complies or has complied (including the relevant time periods) and describe the manner in which each such standard is or has been implemented.” Vizio’s response is: “See Attachment A.” Attachment A, however, does not provide the requested information. Among other things, Attachment A makes no mention of any of the relevant closed captioning or HDCP standards. In addition, there is no identification of the relevant time periods, nor any description of the manner in which any standard has been implemented. If Vizio’s products do not comply with any digital television standards, then Vizio’s response to this interrogatory should so state. Otherwise, Vizio should provide a substantive response to this interrogatory and identify the specific standards with which its products comply.

Interrogatory No. 18 requires Vizio to "[i]dentify all industry or standards organizations in which Vizio has participated and for each describe the nature and timing of Vizio's participation." Vizio has not identified any organizations, once again pointing to Rule 33(d) without identifying the production numbers of any documents. Again, Vizio's reliance on Rule 33(d) is improper. See Laserdynamics 2009 WL 153161, at *3; Cambridge Elecs., 227 F.R.D. at 322.

Pursuant to Local Rule 37, Sony requests an in-person meet and confer regarding the above issues in order to determine whether a motion to compel is necessary. We are available for the meet and confer in our Los Angeles offices on May 8. Please let us know whether Westinghouse is also available then.

Best regards,


Todd Kennedy

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5
6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
8

9 SONY CORPORATION, a Japanese
10 corporation,

11 Plaintiff,

12 v.

13 WESTINGHOUSE DIGITAL
14 ELECTRONICS, LLC, a California limited
liability company,

15 Defendant.

Case No. CV 08-3934 RGK (FMOx)

ORDER Re: DISCOVERY MOTION

16 The court has reviewed and considered all the briefing filed with respect to the parties'
17 "Joint Stipulation Regarding Sony Corporation's Motion to Compel a Further Response to Sony
18 Interrogatory No. 11" ("Joint Stip." or "Motion"), and concludes that oral argument is not necessary
19 to resolve this Motion. See Fed. R. Civ. P. 78; Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d
20 675, 684 n. 2 (9th Cir. 2001, as amended Mar. 27, 2001).

21 DISCUSSION

22 I. STANDARD OF REVIEW.

23 A party can discover any nonprivileged information which is relevant to the claims or
24 defenses of any other party. Fed. R. Civ. P. 26(b)(1). Relevant information does not have to be
25 admissible so long as it appears calculated to lead to the discovery of admissible evidence. Id.
26 "Relevanc[e] is broadly construed, and a request for discovery should be considered relevant if
27 there is any possibility that the information sought may be relevant to the claim or defense of any
28 party. A request for discovery should be allowed unless it is clear that the information sought can

1 have no possible bearing on the claim or defense of a party." McCormick v. City of Lawrence,
 2 2005 WL 1606595, at *5 (D. Kan. 2005) (citations omitted); see also Survivor Media, Inc. v.
 3 Survivor Prods., 406 F.3d 625, 635 (9th Cir. 2005) ("Litigants may obtain discovery regarding any
 4 matter, not privileged, that is relevant to the claim or defense of any party. Relevant information
 5 for purposes of discovery is information reasonably calculated to lead to the discovery of
 6 admissible evidence.") (internal quotation marks and citations omitted). "The party who resists
 7 discovery has the burden to show discovery should not be allowed, and has the burden of
 8 clarifying, explaining, and supporting its objections." Keith H. v. Long Beach Unified Sch. Dist.,
 9 228 F.R.D. 652, 655-56 (C.D. Cal. 2005) (citation omitted); see also Blankenship v. Hearst Corp.,
 10 519 F.2d 418, 429 (9th Cir. 1975) ("Under the liberal discovery principles of the Federal Rules
 11 defendants were required to carry a heavy burden of showing why discovery was denied.").

12 II. INTERROGATORY NO. 11.

13 Interrogatory No. 11 requests defendant "to identify which of its products incorporate certain
 14 specific high level features or capabilities . . . to allow [plaintiff] to make a complete list of
 15 [defendant's] products that would need to be studied to determine whether they infringe one o[r]
 16 more of the ten Sony patents-in-suit." (Joint Stip. at 1-2) (footnotes omitted). Specifically,
 17 Interrogatory No. 11 requests defendant to identify which of its products "incorporate one or more
 18 of the following product features: menu displays capable of displaying in more than one color or
 19 more than one brightness; menu displays capable of displaying in more than one level of
 20 transparency; menu displays capable of displaying a submenu; the capability to superimpose
 21 captions on another image; the capability to superimpose subtitles on another image; and the
 22 capability to securely transfer video data between devices connected to a common bus." (Id. at
 23 7-8). Defendant responded to Interrogatory No. 11,¹ stating, inter alia, that "[a]s understood by
 24 [defendant] and as alleged by [plaintiff], based on a reasonable investigation, no Westinghouse

25
 26 ¹ Under the circumstances, it is a close question as to whether another meet and confer was
 27 required. Given that the Motion involves only one interrogatory, the court will proceed to address
 28 the merits of the Motion. However, the parties are advised that the court will not consider any
 future discovery motions in this matter unless the parties have conducted a timely meet and confer
 process.

1 product includes [the specific feature] as [plaintiff] contends this feature is relevant to any valid and
2 enforceable claim of the [relevant Sony] patent.” (Id. at 11; see also id. at 12-13).

3 Plaintiff contends that defendant’s supplemental response “is unreasonable and obstructs
4 [its] ability to litigate its claims[.]” (Joint Stip. at 14). Defendant counters that, “[a]lthough [plaintiff]
5 may disagree with [defendant’s] understanding of the patents-in-suit and/or its interpretation of the
6 scope of the claims recited therein, [defendant] has provided a specific, substantive response to
7 Interrogatory No. 11.” (Id. at 7). Defendant also contends that the “true issue presented by
8 Interrogatory No. 11 is whether [defendant’s] product features infringe [plaintiff’s] patents, i.e.,
9 whether [defendant’s] product features reflect the claims of the patents-in-suit, which will ultimately
10 be decided by the trier of fact.” (Id. at 25).

11 The court has reviewed defendant’s responses to Interrogatory No. 11 and believes they
12 are deficient. It appears that defendant has deliberately misconstrued Interrogatory No. 11 by
13 giving it a highly technical and unfair reading. See Hunter v. Int’l Systems & Controls Corp., 51
14 F.R.D. 251, 257 (W.D. Mo. 1970) (answer insufficient when based on a deliberate misconstruction
15 of interrogatory); see also Tig Ins. Co. of Mich. v. Vision Service Plan, 2006 WL 192537, at *3
16 (E.D. Cal. 2006) (denying defendant’s discovery motion after finding that defendant “appears to
17 be trying to confuse the expense and burden of having to sift through 30,000 to 50,000 pages of
18 documents responsive to a document request with the separate issue of checking only 70 pages
19 of documents clearly identified in its privilege log”). Contrary to defendant’s assertion, (see Joint
20 Stip. at 25), the interrogatory does not request defendant to identify infringing products, a point
21 that plaintiff made clear during the meet and confer process. (See Declaration of Andrew J.
22 Bramhall in Support of Joint Stip., Exh. G at 21) (“We could have just said, identify all products that
23 infringe claim “X” of the “Y” patent. And you, of course, wouldn’t have answered that.”). Instead,
24 the Interrogatory merely requests that defendant identify the products which contain the features
25 listed in the Interrogatory; features which the parties agree are relevant to the patents-in-suit.
26 (See Joint Stip. at 6; Plaintiff’s Supplemental Memorandum in Support of Joint Stipulation
27 Regarding Sony Corporation’s Motion to Compel a Further Response to Sony Interrogatory No.
28 11 at 3 & n. 3).

1 Indeed, Interrogatory No. 11 is an entirely proper discovery request under the Federal
 2 Rules of Civil Procedure. "[R]elevant discovery in a patent infringement suit includes discovery
 3 relating to the technical operation of the accused products, as well as the identity of and technical
 4 operation of any products reasonably similar to any accused product." Epicrealm, Licensing, LLC
 5 v. Autoflex Leasing, Inc., 2007 WL 2580969, at *3 (E.D. Tex. 2007) (internal quotation marks and
 6 citation omitted); see also Phillip M. Adams & Assocs., LLC v. Dell, Inc., 2008 WL 200340, at *1
 7 (D. Utah 2008) ("Discovery in patent litigation must necessarily identify the products *potentially* at
 8 issue before the products *actually* at issue are identified.") (italics in original). Thus, plaintiff is
 9 entitled to seek the identity of all products that are reasonably similar to any accused product, not
 10 just those products plaintiff has already identified.² See L.G. Philips LCD Co. v. Tatung Co., 2007
 11 WL 869700, at *2 (E.D. Cal. 2007) (allowing plaintiff to seek "information about *all* potentially
 12 infringing products, not just those that have so far been identified[]") (italics in original); Dr.
 13 Systems, Inc. v. Fujifilm Medical Sys. USA, Inc., 2008 WL 1734241, at *3 (S.D. Cal. 2008)
 14 (allowing discovery of "products that are reasonably similar to the accused products[]") (internal
 15 quotation marks omitted).

16 In short, by requesting that defendant identify which of its products contain any of the
 17 features set forth in Interrogatory No. 11, defendant is not being asked to admit whether the
 18 products infringe one or more of the patents-in-suit. (See Joint Stip. at 6 (explaining that the
 19 features described in Interrogatory No. 11 relate to one or more of the patents-in-suit) & 19-20
 20 (explaining that the features described in Interrogatory No. 11 are not linked to the actual claim
 21 language so as to explicitly avoid seeking any specific admissions of infringement)). Instead,
 22

23 ² The cases cited by defendant are inapposite. In Tesseron, Ltd. v. R.R. Donnelley & Sons
 24 Co., 2007 WL 2034286 (N.D. Ohio 2007), the plaintiff sought discovery "of all the systems that
 25 [defendant] is using and has previously used." Id. at *2. The Tesseron court found that while
 26 discovery is not limited to the accused systems, the discovery request must be narrowed because
 27 it "includes many systems that cannot conceivably infringe on any of [plaintiff's] patents." Id. at
 28 *5. Similarly, in Caliper Techs. Corp. v. Molecular Devices Corp., 213 F.R.D. 555 (N.D. Cal.
 2003), plaintiff sought discovery of "any invention, method, apparatus, or technology that does not
 use antibodies or radioactive isotopes" without offering any explanation as to why this discovery
 was "relevant to any claim or defense of a party in this case." Id. at 558. Here, in contrast, the
 interrogatory concerns the patents-in-suit.

1 defendant is being asked to identify the products that include any of the features set forth in the
2 Interrogatory.

3 **This Order is not intended for publication. Nor is it intended to be included or**
4 **submitted to any online service such as Westlaw or Lexis.**

5 Based on the foregoing, IT IS ORDERED THAT:

6 1. Plaintiff's Motion to Compel a Further Response to Sony Interrogatory No. 11
7 **(Document No. 40) is granted.**

8 2. Defendant shall provide a supplemental written response, under oath, to
9 Interrogatory No. 11 no later than **February 23, 2009**. Defendant shall identify by model number
10 all of its products that contain any of the features set forth in Interrogatory No. 11, irrespective of
11 whether defendant believes the product(s) is related to or infringes any of the patents-in-suit. If
12 none of defendant's products contain any of the features set forth in Interrogatory No. 11, then
13 defendant shall state so under oath. In addition, defendant's response shall indicate under oath
14 whether it considered and included all of its products in responding to the subject Interrogatory.
15 Finally, to the extent defendant claims that all responsive information has been provided or there
16 is a lack of information necessary to provide a complete response, it shall set forth in detail, under
17 oath: (1) the efforts defendant made to obtain the requested information; and (2) that no further
18 responsive information is available.

19 3. The parties are reminded that they must strictly comply with the Local Rules and the
20 Court's Order of November 17, 2008.

21 4. The failure of any party or attorney to comply with the requirements of this Order,
22 the Local Rules and Federal Rules of Civil Procedure may result in sanctions being imposed.

23 Dated this 11th day of February, 2009.

24
25 /s/

26 Fernando M. Olguin
27 United States Magistrate Judge
28

EXHIBIT 4

quinn emanuel trial lawyers | san francisco

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May 7, 2009

VIA E-MAIL, U.S. MAIL, AND FACSIMILE

Ryan McCrum, Esq.
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
fax: 216-579-0212

Re: Sony Corporation v. Vizio, Inc.

Dear Ryan:

I write in response to your May 6, 2009 letter to Todd Kennedy regarding Vizio's discovery responses.

As a preliminary matter, Sony reiterates its request for a meet and confer for the remaining areas of disagreement described below. As Mr. Kennedy pointed out in his letter of April 29, 2009, we were, and still are, available to meet and confer on May 8, 2009 in our Los Angeles offices. As an accommodation to you, we are willing to postpone the meeting until Monday May 11, 2009. Pursuant to Local Rule 37, the conference must take place by that date.

Sony accepts Vizio's offer that the parties produce confidential documents as "Outside Attorneys' Eyes Only" prior to the Court's entry of a protective order. We are preparing a separate response regarding your latest rounds of edits to the Protective Order. Although some of your proposed changes appear to be okay, others such as the changes to provisions regarding source code and the prosecution bar are unnecessarily complicated and overbroad.

We disagree with your characterization of Sony's first production of documents on April 30, 2009, particularly the statement that "Sony's first production consisted almost entirely of Vizio's

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own public documents and other public documents [], and Sony still has not produced documents from the Westinghouse litigation.” In fact, Sony produced 22,968 pages of documents on April 20, 2009, over half of which were materials identified as “prior art”¹ by Westinghouse in the Westinghouse litigation, as indicated by the WDE production numbers that remain on these documents. Of the remainder, hundreds of pages consisted of documents relating to Vizio’s Interrogatory No. 8, requesting information on nonobviousness. The portion consisting of Vizio’s own public documents were produced in response to Vizio’s Interrogatory No. 1 and are extensively cited in Sony’s response to that Interrogatory.

With respect to the production of documents from the Westinghouse litigation in general, Sony continues to review the Westinghouse-related documents for relevancy and responsiveness to Vizio’s discovery requests and will produce additional documents as stated in Sony’s response to Vizio’s Request for Production No. 32. As noted in the response that request, Sony’s production of non-Sony documents from the Westinghouse matter will necessarily be limited to non-confidential documents that are not subject to the Protective Order in that matter. Sony does not object to Vizio obtaining and reviewing materials produced by Westinghouse and others under the Protective Order in that matter. But in order for Sony to produce such materials, we will need written confirmation from Westinghouse that it does not object. Upon receiving such written confirmation, Sony will produce the entirety of the parties’ productions and filings in the Westinghouse matter, provided that Vizio agrees to reimburse Sony for any copying expenses of documents kept in hard copy format and any expenses related to database extraction or disk burning.

With respect to the inspection of Vizio’s products in its control, as stated in your letter, please provide a proposal for the date, time, and protocol for such an inspection, to take place within 60 days of April 29, 2009. As already stated in the Todd Kennedy’s letter, Sony expects Vizio to permit Sony to bring its experts, a photographer, and a videographer to the inspection.

With respect to Sony’s specific document requests, we expect Vizio to provide an appropriate privilege log for any documents Vizio withholds on the basis of any privilege. In addition, for Document Requests Nos. 55-57, Sony notes that documents and information provided by Vizio to third parties, including Sony, during pre-filing negotiations are not privileged. The other requests described in Todd Kennedy’s letter to you will be part of the parties’ meet and confer.

With respect to Interrogatory No. 2, as you know our letter sought information on AmTRAN Logistics, Inc., which according to publicly available documents is involved in the importation and distribution of the AmTRAN televisions that Vizio sells in the United States under its brand name. AmTRAN Logistics is not mentioned in Vizio’s response to this interrogatory. Sony will renew its request to meet and confer on this Interrogatory if Vizio’s response remains deficient after Vizio has provided documents and supplemented its interrogatory response, as you indicate Vizio will do in your letter.

In its response to Interrogatory No. 3, Vizio promised to supplement its response once it received “the identity of the asserted claims and the products accused of infringing each of those claims.”

¹ As stated in its responses to Vizio’s interrogatories, Sony makes no admission that any of these documents are prior art to any of the patents-in-suit.

Sony provided that information to Vizio on April 30, 2009 in Sony's responses to Vizio's interrogatories. Accordingly, we expected that Vizio would provide its non-infringement claim charts to Sony within approximately 30 days from Vizio's receipt of Sony's claim charts. Your letter, however, now arbitrarily suggests Vizio has no intention of disclosing its noninfringement positions until three weeks before the pre-trial conference. This position is unreasonable and we intend to raise it during the meet and confer.

We also disagree with your position on Sony's Interrogatory No. 11 and do not see how it could possibly be the case that Vizio does not have readily available information that would permit it to provide a substantive response to this interrogatory. Sony will renew its request to meet and confer once Vizio has provided the documents indicated and supplemented its response, if such response does not meet the requirements of Judge Olguin's order, which was attached to Todd Kennedy's letter.

For Interrogatory No. 12, Sony reiterates its request that Vizio supplement its response with any additional names of persons having knowledge of these topics. If these three individuals are the only persons having knowledge of these topics, then Vizio should so state. On the other hand, if other Vizio personnel do have knowledge of these topics and Vizio refuses to identify them, Sony reserves the right to later move to preclude Vizio from relying on such persons as witnesses or declarants.

With respect to the subjects above that are still in dispute, please confirm that counsel for Vizio can meet and confer in our Los Angeles office on either May 8 or May 11, 2009.

Very truly yours,

/s/ Peter A. Klivans

Peter A. Klivans

EXHIBIT 5

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SONY CORPORATION, a Japanese)	
corporation,)	
)	
Plaintiff,)	
)	
vs.)	No. 8:08-cv-01135-
)	RGK-FMO
VIZIO, INC., a California)	
corporation,)	
)	
Defendant.)	
<hr/>		

Transcript of proceedings, taken at 865 South
Figueroa Street, 10th Floor, Los Angeles,
California, commencing at 12:09 p.m. Monday,
May 11, 2009, before BETH FELIX, Certified
Shorthand Reporter No. 12766.

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<p>1 INDEX</p> <p>2</p> <p>3 EXHIBITS FOR IDENTIFICATION</p> <p>4 1 Vizio's response to Sony's first set of</p> <p>5 requests for production; 99 pages</p> <p>6</p> <p>7 2 Vizio's response to Sony's first set of</p> <p>8 interrogatories; 38 pages</p> <p>9 3 Letter to James Wamsley, dated April 29,</p> <p>10 2009; 10 pages</p> <p>11</p> <p>12 4 Letter to Todd Kennedy, dated May 6, 2009;</p> <p>13 5 pages</p> <p>14 5 Letter to Ryan McCrum, dated May 7, 2009;</p> <p>15 3 pages</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 4</p>	<p>1 confidential information.</p> <p>2 MR. MC CRUM: Obviously, our gathering of</p> <p>3 information is ongoing. We can't predict the full</p> <p>4 extent of what information is going to contain</p> <p>5 third-party information at this point, but we had, at</p> <p>6 least, identified some initial documents that contained</p> <p>7 third-party confidential information.</p> <p>8 As I'm sure it's no secret here, a lot of the</p> <p>9 technology in the products that have been accused is in</p> <p>10 the chips that are used in these products, and Vizio</p> <p>11 does not manufacture these chips. They don't design</p> <p>12 and develop these chips. They're made by third</p> <p>13 parties. As our interrogatory responses reflect, a</p> <p>14 large number of these chips are made by a company known</p> <p>15 as Media Tech, so we have documents with Media Tech</p> <p>16 confidential information in them as one example.</p> <p>17 MR. KENNEDY: I don't think that answers the</p> <p>18 question, which is how do you define confidential</p> <p>19 information. I understand you have information that</p> <p>20 Vizio considers to be confidential. I want to know</p> <p>21 going forward what kinds of documents are you going to</p> <p>22 be withholding? Does it require a contract with the</p> <p>23 third party or some kind of oral agreement that the</p> <p>24 documents will be confidential?</p> <p>25 MR. MC CRUM: Well, I don't know the answer to</p> <p style="text-align: right;">Page 6</p>
<p>1 Los Angeles, California, Monday, May 11, 2009</p> <p>2 12:09 p.m. - 1:09 p.m.</p> <p>3</p> <p>4 MR. MILLER: So let's go on the record now.</p> <p>5 So from Quinn Emanuel representing Sony, Rory Miller.</p> <p>6 MR. CORR: And from Jones Day representing</p> <p>7 Vizio, Steve Corr.</p> <p>8 MR. MILLER: Everyone else.</p> <p>9 MR. MC CRUM: Ryan McCrum from Jones Day</p> <p>10 representing Vizio.</p> <p>11 MR. PEASE: Tom Pease from Quinn Emanuel</p> <p>12 representing Sony.</p> <p>13 MR. KLIVANS: Peter Klivans from Quinn Emanuel</p> <p>14 representing Sony.</p> <p>15 MR. KENNEDY: And Todd Kennedy from Quinn</p> <p>16 Emanuel representing Sony.</p> <p>17 MR. MILLER: Okay. So we can go ahead and</p> <p>18 launch into this. Tom, do you know where you'd like to</p> <p>19 begin?</p> <p>20 MR. PEASE: I think Todd is going to take the</p> <p>21 lead going forward.</p> <p>22 MR. KENNEDY: Okay. Why don't we start with</p> <p>23 Vizio's refusal to produce third-party documents</p> <p>24 containing confidential information. As an initial</p> <p>25 matter, I was curious what Vizio considers to be</p> <p style="text-align: right;">Page 5</p>	<p>1 that question. Maybe since Sony has raised the same</p> <p>2 concern, we ought to talk about each party's position</p> <p>3 on what confidential information is. I think we are</p> <p>4 here to talk about Sony's concerns about our discovery.</p> <p>5 I think they go hand in hand.</p> <p>6 To the extent you folks have indicated quite</p> <p>7 clearly you are withholding documents based on</p> <p>8 confidential information of third parties, I'm happy to</p> <p>9 discuss what we collectively think is the correct</p> <p>10 definition of confidential information and what we're</p> <p>11 withholding, but I think that any information that we</p> <p>12 have a reason to believe is proprietary and that we</p> <p>13 have a reason to believe should not be disclosed</p> <p>14 without the consent of a third party is, at least, at</p> <p>15 first go confidential information in our view.</p> <p>16 MR. KENNEDY: Am I correct to say that Vizio</p> <p>17 intends to withhold documents that it has decided alone</p> <p>18 are confidential even though those are not the subject</p> <p>19 of a formal confidentiality contract?</p> <p>20 MR. MC CRUM: We're not in a position to say</p> <p>21 that. We have documents we know that contain</p> <p>22 confidential information because we've been told that.</p> <p>23 As I'm sitting here right now, I'm not aware of a</p> <p>24 decision that we made -- a unilateral decision that we</p> <p>25 made to withhold documents because we think they might</p> <p style="text-align: right;">Page 7</p>

1 be confidential. If there is a question about a third
2 party's documents, we are going to respect that and we
3 are going to seek out that company's consent to produce
4 those documents.

5 MR. KLIVANS: This is Peter Klivans. You are
6 seeking permission from those parties where necessary
7 to produce them?

8 MR. MC CRUM: I think that's what we said in
9 our letter, and, yes, we are taking steps to secure
10 that consent.

11 MR. KENNEDY: What kinds of steps are you
12 taking?

13 MR. MC CRUM: We are preparing letters and
14 sending those out.

15 MR. KENNEDY: Will you provide those letters
16 to Sony?

17 MR. MC CRUM: I will be happy to give you
18 copies.

19 MR. KENNEDY: When will Vizio do that?

20 MR. MC CRUM: At this point, I don't know. I
21 know we are in the process of doing that now.

22 MR. KENNEDY: One concern that we have in
23 particular is that AmTRAM, which is a third party,
24 technically, to this case produces, according to Vizio,
25 most of Vizio's products, and I'm curious if Vizio

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1 intends to withhold documents generated by AmTRAM.

2 MR. MC CRUM: We haven't made a determination
3 on that yet. We are in talks with all third parties
4 that we think have confidential information, and quite
5 frankly, we haven't gotten that far with AmTRAM yet.

6 MR. KENNEDY: Have you reviewed any AmTRAM
7 documents that you currently consider to be
8 confidential?

9 MR. MC CRUM: I don't think we need to talk
10 about that. I think we're on the fringe of work
11 product here, guys. Sufficed to say, we are going to
12 take the steps to secure the third-party consent that
13 we need to. If we have trouble doing that, we will
14 certainly let you know.

15 MR. KENNEDY: At this point, I still don't
16 have any idea what you consider to be confidential
17 information.

18 MR. MC CRUM: If we are going to withhold
19 documents because we're unable to secure third-party
20 consent, we will let you know, and you will know the
21 nature of the documents.

22 MR. KENNEDY: Is Vizio willing to provide Sony
23 a written definition of confidential information so the
24 parties have an understanding?

25 MR. MC CRUM: Why don't you propose your

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1 understanding. We'll let you know if it's different.

2 The term "confidential information" can be construed in
3 a number of different ways. I don't know what you are
4 looking for. What are you looking for?

5 MR. KENNEDY: What we're looking for is
6 identified in our interrogatory request and our
7 document request. Your objection is that you will
8 provide information that is responsive unless it's
9 considered by Vizio confidential information, which
10 brings us to the question. You asked me to provide you
11 with a definition. I think the burden is on Vizio to
12 provide a definition. It's initially your objection.
13 We're talking about Vizio's responses during this
14 telephone call.

15 MR. MC CRUM: I can't decide what's
16 confidential to these third parties. If we feel that
17 there is information in our documents that could be the
18 subject of a confidentiality claim, then we're going to
19 seek permission from those third parties to produce it.
20 Whether it is confidential or not, I don't know.

21 MR. KENNEDY: When can Sony expect to hear
22 from Vizio about which parties it has propounded on --
23 excuse me. When can Sony expect to hear from Vizio
24 about which parties it is asking to produce
25 confidential information?

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1 MR. MC CRUM: As we obtain those documents
2 that are subject to potential third-party
3 confidentiality restrictions, we'll let you know. I've
4 already told you one. That's Media Tech.

5 MR. KENNEDY: You asked Sony to provide you
6 with a definition of confidential information. I think
7 we can discuss that. As an initial starting point, why
8 don't I suggest confidential information is only that
9 information that is subject to a formal contract of
10 confidentiality between a party and a third party.
11 Does that sound reasonable to you?

12 MR. MC CRUM: I would have to talk to our
13 client about that because I'm not sure that information
14 that may have a claim of confidentiality is subject to
15 a formal written agreement. I have to check with my
16 client to see if that's acceptable.

17 MR. KENNEDY: That sounds reasonable to us.
18 Can you, please, talk with your client and get back to
19 us on Friday about whether that's a reasonable
20 definition going forward?

21 MR. MC CRUM: We'll try to get back to you on
22 Friday, if we can get in touch with you.

23 MR. KENNEDY: Does anyone else have anything
24 on --

25 MR. KLIVANS: We have an agreement by letter

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1 now to produce stuff outside counsel's eyes prior to
 2 entry of the protective order. We'll be going forward
 3 with that. That falls under that category. I just
 4 want to check with you. We got the first disk you
 5 produced this morning. It was user manuals and a
 6 couple servers' manuals. Can we expect to be receiving
 7 outside counsel's eyes only stuff too soon?

8 MR. MC CRUM: Yeah. I think we reached an
 9 agreement on production of confidential information
 10 outside attorney's eyes only, and we are, also,
 11 preparing to move forward with that understanding as
 12 well.

13 MR. KLIVANS: I know how these things take
 14 time and effort to get these out the door. Do you have
 15 a rough guess?

16 MR. MC CRUM: I don't. I don't know when our
 17 next production is going to be.

18 MR. PEASE: Can we assume we'll have it within
 19 30 days?

20 MR. MC CRUM: That's, probably, a fair
 21 assumption. I don't want to commit to anything. I
 22 don't see anything that would prevent us from giving it
 23 to you in 30 days.

24 MR. PEASE: This is Tom again. Putting aside
 25 the definition what's third-party confidential, other

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1 than the Media Tech that you identified so far, are
 2 there any other documents that you know of that you are
 3 withholding based on a third-party confidentiality
 4 concern?

5 MR. MC CRUM: I haven't reviewed documents
 6 myself. I can't speak to that. I'm not personally
 7 aware. That doesn't mean there are not others. The
 8 only ones I'm personally aware of are Media Tech
 9 documents. It's quite possible that our reviewers have
 10 identified others.

11 MR. PEASE: For the Media Tech docs, are those
 12 schematics and spec sheets and the like, or is it a
 13 broader category than that?

14 MR. MC CRUM: I think right now what I've been
 15 referring to is those types of technical documents.

16 MR. PEASE: Okay.

17 MR. KLIVANS: What about server manuals? Will
 18 more of those be coming soon?

19 MR. MC CRUM: Steve Corr, the server manuals,
 20 do you know whether we've been able to find any
 21 additional ones? I don't know if we have them all.
 22 We're searching for as many as we can find.

23 MR. CORR: This is an ongoing project right
 24 now. We would expect to include those in future
 25 productions that we expect to get out in the next 30

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1 days. There are just some challenges in identifying
 2 each one relative to the various models. Sufficed to
 3 say, that's included in our efforts to move our
 4 production forward.

5 MR. MILLER: One follow-up to the third-party
 6 things you stated that you're aware of Media Tech being
 7 aware one of the third parties have you notified Media
 8 Tech of the request for production yet.

9 MR. MC CRUM: I don't know the answer to that.
 10 I can tell you that I have seen a letter that we
 11 prepared. It's been over a week ago now. Whether
 12 we've, actually, sent it out yet I can't say for sure,
 13 so I hope that we contacted them. But if we haven't,
 14 it will be imminent.

15 MR. CORR: My answer is the same.

16 MR. MILLER: I figured, if it was different,
 17 you would have jumped in.

18 MR. KENNEDY: Okay. Anything else on
 19 confidential third-party information?

20 MR. MC CRUM: Not from me.

21 MR. KENNEDY: Why don't we move on to Sony's
 22 Request for Production Number 1, which requests an
 23 inspection of the accused product. We appreciate Vizio
 24 has agreed to allow Sony to inspect all of the accused
 25 products in its inventory. We should talk about when

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1 that inspection can take place.

2 MR. MC CRUM: Well, you folks offered doing
 3 that within -- or proposed doing it within 60 days. I
 4 can tell you that we have already broached the topic
 5 with our client, and we are taking steps to try to get
 6 moving on that front. But we need to talk to them
 7 about the logistics, what they have, a practical place
 8 for this to take this place. I think we shouldn't
 9 haven't a problem complying with your request to get
 10 this done within 60 days.

11 MR. KENNEDY: Does Vizio accept Sony's
 12 proposal that Sony will be able to take its experts as
 13 well as a photographer and a videographer to the
 14 inspection?

15 MR. CORR: Ryan, can I jump in on that one
 16 issue, Todd? It's going to have to be broached before
 17 we move forward. We're going to have to hammer out the
 18 protective order so that experts are properly disclosed
 19 and signed up to it, and so at this point, I'm not sure
 20 why we would need to agree or not agree to that. Once
 21 we have a protective order in place, we'll know the
 22 disclosure of your experts. We can respond at that
 23 time.

24 MR. KENNEDY: I was just curious if Vizio
 25 right now has any particular objection to the idea of

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1 Sony bringing an expert as well as a photographer and
2 videographer to the inspection. I want to identify any
3 disputes we may have right now.
4 MR. CORR: To refer to my earlier answer, I
5 don't think that Vizio could generate any concern
6 without any disclosure of the experts. Regarding your
7 other abilities to take discovery, I think as long as
8 we comply with the rules related to inspection, I don't
9 foresee any issues.
10 MR. KENNEDY: Okay.
11 MR. PEASE: This is Tom. Other than the
12 specific objection to the specific experts Sony will,
13 eventually, identify under the protective order, Vizio
14 doesn't have an objection to the inspection or to the
15 concept of Sony bringing experts to the inspection;
16 correct?
17 MR. CORR: We haven't delved into this topic
18 with the client specifically. Until we get the
19 logistics of the inspection worked out and the
20 protective order, I'm not committing there wouldn't be
21 a future dispute. We haven't broached the subject to
22 the client until we get into the details of the
23 examination.
24 MR. PEASE: Well, we did raise the topic in
25 our letter. We thought you would have broached it, to

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1 the extent that you could, with your client. You have
2 60 days from the letter, so that takes us to the end of
3 June. So, hopefully, we'll have a protective order in
4 place long before that.
5 MR. MC CRUM: Further to Steve's point, the
6 answer is going to depend on the logistics of the
7 inspection and the finalization of the protective order
8 where this takes place. If it's at Vizio's facilities
9 or elsewhere, it's going to bear on whether or not we
10 allow video cameras into our facilities or whether we
11 do it somewhere else. We've got to hammer out the
12 logistics, figure out where we're going to have the
13 inspection before we can talk about whether video
14 cameras and unknown unidentified personnel are going to
15 be able to attend. We're open to the idea. We just
16 need to nail down the logistics of it at this point.
17 MR. PEASE: I think, from our standpoint, the
18 logistics are going to include photography and
19 videotaping. If you're saying you're not going to
20 allow that, that's something we ought to be discussing
21 because we're going to need that. That's something we
22 ought to tee up with the Court independent of who the
23 experts are and whether you have objections or not.
24 MR. CORR: Yeah. Why don't -- Tom, this is
25 Steve. Why don't we endeavor to work out those two

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1 subtle points by the end of this week, and then as long
2 as -- I mean, I agree with Ryan's point that some of
3 this is premature. If you're asking if the client
4 fundamentally has an opposition to the use of
5 videographers and photographers, that may guide our
6 conversations of where we're going to have this
7 inspection.
8 MR. PEASE: We'll agree to reach a resolution
9 or try to by the end of this week. How about that?
10 MR. CORR: That's fine.
11 MR. KENNEDY: Why don't we move on to Sony's
12 Interrogatory Number 2, which requests information
13 about how, when and by whom Vizio products were
14 manufactured, sold and distributed. Sony has a couple
15 of issues with Vizio's response. The response does not
16 mention the company AmTRAM Logistics, Inc.
17 MR. MC CRUM: We raised this in our responsive
18 letter. Did you guys look at the chart we refer to?
19 MR. KENNEDY: I have it in front of me right
20 now.
21 MR. MC CRUM: There's a column for vendor.
22 AmTRAM is listed literally a dozen times.
23 MR. KENNEDY: Does that refer to AmTRAM
24 Logistics, Inc.?
25 MR. MC CRUM: Yes. It does as far as I know.

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1 MR. KENNEDY: AmTRAM Logistics, Inc., is
2 incorporated in the state of California. Am I
3 understanding there's another AmTRAM entity that
4 operates under the laws of Taiwan? By looking at your
5 reference to AmTRAM, it's unclear to me which of those
6 entities you're referring to.
7 MR. MC CRUM: Okay. That confusion wasn't
8 clear from your letter. We can certainly go back and
9 figure out the precise name of the vendor, and we can
10 put who that is in this chart. Would that be
11 sufficient?
12 MR. KENNEDY: I think that would be a starting
13 point. I don't know if just by simply listing, you
14 know, one vendor or the other that that's responsive,
15 and it may be that the entities are involved in the
16 manufacturing and distribution of the products in
17 different ways. And, I mean, just the column that says
18 vendor does not describe in any way or identify in any
19 way how that company is involved. It could be
20 manufacturer or distribution or both.
21 MR. MC CRUM: Well, if they were involved in
22 any of the information -- if they're involved in any of
23 those tasks, we would be including it in our response
24 just for, you know -- as I mentioned earlier, you know,
25 Vizio itself does not manufacture anything. They get

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1 products from their vendors. How their vendors make,
2 design and develop the products -- that's information
3 in their possession, custody and control. AmTRAM is
4 one of our vendors, and I will be happy to supplement
5 our chart to give the full and complete name of the
6 company for whom we purchase our TVs from.
7 MR. KENNEDY: Will Vizio agree to identify
8 each company that manufactures each of its accused
9 products as well as each company that distributes each
10 of its accused products?
11 MR. MC CRUM: I don't know. What do you mean?
12 Let me get the Interrogatory in front of me before I
13 answer that question. Okay. So you want to know -- I
14 mean, what we are providing in the vendor column is who
15 we get the products from.
16 MR. KENNEDY: That's not really responsive to
17 the interrogatory, which requires Vizio to, actually,
18 describe how, when and by whom the product was
19 manufactured, sold, offered for sale, distributed in or
20 imported into the United States. Simply having a
21 column that lists companies is not responsive.
22 MR. MC CRUM: Well, I mean, we're all still
23 going to be relying on documents as providing
24 responsive information as well. What more are you
25 looking for?

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1 MR. KENNEDY: I think what we're, actually,
2 looking for is for each product a description what
3 companies are involved in the distribution, manufacture
4 and sale.
5 MR. MC CRUM: It's a lot more simpler than you
6 think. We purchase the products from our vendors, and
7 Vizio sells them.
8 MR. KENNEDY: When can we expect a supplement
9 to your response?
10 MR. MC CRUM: I think we'll be in a position
11 to do that within 30 days of your letter.
12 MR. KENNEDY: We know that Vizio purchases,
13 for example, products made by AmTRAM Technology Co.,
14 Ltd. -- I think is the formal name of the company in
15 Taiwan, but how those products get from that company to
16 Vizio is what we're concerned with. And we think there
17 may be other companies, like AmTRAM Logistics, which we
18 identified, that were involved as intermediaries in
19 some way. That's the kind of information we're looking
20 for through this interrogatory response.
21 MR. MC CRUM: Okay.
22 MR. KENNEDY: Anything else on that one?
23 Let's move on to Sony's Interrogatory Number 3, which
24 requests Vizio's contentions in plain short form.
25 Vizio, basically, said it would not answer that

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1 interrogatory until Sony identified the asserted claims
2 and accused products. Sony did that on April 29th in
3 my letter to Vizio, and now, Vizio is refusing to
4 answer because it views this as requiring legal
5 contentions. I think Sony's position -- as an initial
6 matter, we're really more interested in the factual
7 contentions. For example, if Vizio contends a
8 particular television does not have a particular
9 feature required by its claims, Vizio would be required
10 to say so in response to the interrogatory.
11 MR. MC CRUM: Well, I think that any time
12 you're applying the terms of a claim to a product it's
13 going to involve legal contentions. We've all been
14 around and done this enough that that involves issues
15 in claim construction. That is the first step of any
16 type of infringement analysis. I don't think you can
17 separate one from the other that easily, but, you know,
18 more to the point here is the fact that, as plaintiff,
19 our position is that -- well, let me step back a
20 minute.
21 We had tried to propose an orderly exchange of
22 this type of information, and that offer was rejected
23 by Sony. And I really believe that the best way to
24 deal with these types of issues is to work together,
25 per Judge Klausner's instructions, as professionals and

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1 come to some type of an agreement by which we can
2 exchange these types of contentions.
3 MR. KENNEDY: I think the information that
4 you're referring to, at least, from Sony's end has
5 already been exchanged. Sony has provided Vizio with
6 extremely detailed infringement claim charts. Really,
7 this meet and confer is about Interrogatory Number 3
8 and Vizio's failure to --
9 MR. MC CRUM: I understand that, and with all
10 due respect -- was that Rory that made that statement
11 about your infringement contentions?
12 MR. MILLER: I believe that's Todd.
13 MR. MC CRUM: Todd, those infringement
14 contentions were just wholly deficient. I don't know
15 if you personally prepared them, but they were almost
16 useless in many regards.
17 MR. KENNEDY: I think that the parties are
18 going to have a meet and confer about that.
19 MR. MILLER: Guys, I hate to jump in here and
20 play moderator, but we do have a court reporter who is
21 trying valiantly to keep all of this straight. So if
22 we could remember to identify ourselves before we begin
23 speaking for her benefit, that would be helpful.
24 MR. MC CRUM: I know that we're here to talk
25 about Vizio's responses today. We did ask a few times

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1 to talk about both today, but you folks didn't want to
2 do that. Our response to these interrogatories depends
3 largely on what claims you, as plaintiff, are making in
4 your infringement contentions. To date, we don't have
5 complete and comprehensive infringement contentions
6 from Sony. There are -- there are a number of
7 deficiencies in them. For Sony to insist that we now
8 provide noninfringement contentions based on what you
9 provided in your interrogatory responses is just -- it
10 just can't happen. I mean, we need complete and
11 comprehensive infringement contentions before we can
12 answer your demands to provide our legal contentions.
13 MR. KENNEDY: This is Todd Kennedy. Sony
14 disagrees with Vizio's view that its infringement
15 contentions are deficient. It's certainly no excuse
16 for Vizio to not provide the information it has
17 currently responsive to this interrogatory. Vizio has
18 provided no information about why it thinks its
19 products do not infringe these claims.
20 MR. MC CRUM: I think our correspondence
21 speaks for itself. Our position is that there's
22 nothing that we have been ordered to provide in terms
23 of legal contentions during fact discovery. We think
24 it's severely premature to be insisting on this stuff
25 right now. This is fact discovery. It's early in fact

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1 discovery. What you're seeking relates to legal
2 issues.
3 With that said, we are willing to talk about a
4 schedule by which we can have an orderly exchange of
5 this information and remove all of the future disputes
6 about this. We don't have to get on the phone with the
7 court reporter and argue about this. We can have
8 deadlines by which these contentions on these issues
9 are due.
10 Short of that, there's nothing in any local
11 rule or court order that mandates that we provide these
12 legal contentions this early in fact discovery
13 especially given the charts provided by Sony in
14 response to our interrogatories.
15 MR. PEASE: I think we kind of crystallized
16 the dispute here then. You asked Sony to produce claim
17 charts and infringement contentions, and you didn't
18 seem to have a problem with those calling for legal
19 conclusions when you propounded those interrogatories.
20 You're not willing to do the same in response to our
21 interrogatories.
22 MR. MC CRUM: That's, actually, not right
23 because we don't dispute that you're entitled to our
24 legal contentions at some point. In fact, the order
25 that was issued by the judge indicates that detailed

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1 legal positions have to be provide, at least, 21 days
2 before the final conference. We're willing to comply
3 with that for sure. You're entitled to that.
4 Our mission is that right now on this record
5 you're not entitled to that stuff right now, but we are
6 willing to agree to something where parties exchange
7 this stuff before that 21-day deadline that I referred
8 to, and I think that makes an abundance of sense.
9 MR. KENNEDY: I understand that Vizio would
10 like to exchange this information in a different
11 manner, but I don't see how that desire somehow excuses
12 Vizio from answering the interrogatories that's already
13 been propounded.
14 MR. MC CRUM: We're not asking to be excused
15 from answering. We just don't think that legal
16 contentions and that type of information is the proper
17 subject of fact discovery, particularly, this early in
18 fact discovery and, particularly, given the contentions
19 that you folks have provided to date.
20 MR. PEASE: Well, I think we've got a dispute.
21 I think that's an issue we can raise with the Court at
22 this point. We've given you hundreds, if not
23 thousands, of pages of claim charts. In your view,
24 they're not sufficient. We think we did a very
25 thorough job setting forth our contentions, and we need

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1 to know Vizio's response to those contentions.
2 MR. MC CRUM: Just so the record is clear, I'm
3 not trying to take unfair jabs here. The reference to
4 hundreds of pages of claim charts I would encourage you
5 all who haven't looked at them to look closely at them.
6 It is a cut-and-paste for every single limitation of,
7 like, five to six pages of the same cut and paste over
8 and over again. Most of which is irrelevant to the
9 claim limitations. I want the record to be clear on
10 that. The fact that there's hundreds of pages of claim
11 charts does not mean there was a substantive analysis
12 done. That's an important point I want to make sure is
13 clear on the record.
14 MR. KENNEDY: Sony absolutely disputes that.
15 Sony took great care in preparing those claim charts.
16 It is far from a cut-and-paste job. Every single
17 element was addressed specifically, but this meet and
18 confer is not about Sony's responses. It's about
19 Vizio's.
20 Unless anyone else has something to say about
21 number 3, why don't we move to Interrogatory Number 8,
22 which requires Vizio to produce sales information, and
23 Vizio, it appears, is relying on 33(d). I would just
24 like Vizio to confirm when it will produce those
25 documents.

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1 MR. MC CRUM: I can't give you a date by which
2 we'll have those. Those are one of our top priorities
3 for gathering information. We recognize and we put on
4 the top of our list information that is responsive to
5 interrogatories. So we do -- we do have some of this
6 stuff that we are gathering right now, and we are
7 working very hard to get the rest of it. I should have
8 an answer for you by Friday. I should be able to give
9 you some sense of when those documents are going to be
10 produced.

11 MR. KLIVANS: Our understanding is that the
12 parties will do rolling productions as they gather and
13 review stuff. You mentioned you already have some
14 stuff that is responsive to this interrogatory. Is
15 there any reason why that wouldn't be produced in the
16 near future?

17 MR. MC CRUM: I said we're in the process of
18 gathering stuff. If I led you to believe otherwise, I
19 apologize.

20 MR. KLIVANS: If I misunderstood, sorry.

21 MR. MC CRUM: That's okay. So, yes, we are
22 trying to gather the interrogatory responsive documents
23 as quickly as we can. For this one, I will give you a
24 report on Friday as to where we stand on that.

25 MR. KENNEDY: Let's move on to Interrogatory

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1 Number 10, which requires Vizio to provide information
2 about when and how it became aware of each of the
3 patents in suit. I understand Vizio says that it will
4 supplement its response to include the 373472 and 468
5 patents. Can we expect Vizio to do that within 30 days
6 of the date of my letter?

7 MR. MC CRUM: Yes.

8 MR. KENNEDY: Interrogatory Number 11 requires
9 Vizio to identify for each Vizio product which of the
10 11 features it incorporates. As I'm sure Vizio is
11 aware, Sony propounded an almost identical
12 interrogatory in the Westinghouse case. Judge Olguin
13 found the interrogatory is proper. What is Vizio's
14 position?

15 MR. MC CRUM: Our position is we provided you
16 an answer. We have not taken the position we're not
17 going to answer. We've answered the interrogatory.

18 MR. KENNEDY: From Sony's perspective, the
19 answer is deficient. It does not list any feature for
20 any product.

21 MR. MC CRUM: That's because we relied on
22 33(d).

23 MR. KENNEDY: Can you explain how documents
24 produced under 33(d) will be sufficient to answer that
25 interrogatory?

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1 MR. MC CRUM: Gosh, that's a loaded question.
2 I guess my -- the only way I can answer that -- you'll
3 see our documents. If you have a problem and don't
4 think they're satisfactory, you can let us know then.
5 We think they're responsive and have responsive
6 information.

7 MR. KENNEDY: I don't see how documents could
8 possibly answer this interrogatory under 33(d). It
9 seems to me the interrogatory is quite simple and
10 straightforward and just requires Vizio to list for
11 each product which of 11 features --

12 MR. MC CRUM: Let me ask you this: You
13 provided claim charts; right? Those claim charts were
14 filled with pictures from user manuals purportedly
15 showing certain features. If our documents can't
16 possibly establish these features, by your own
17 admission, your claim charts are equally deficient.

18 Our position is that there are documents that
19 do show these features, and I think that's evidenced by
20 the fact that you're relying on this type of thing in
21 your claim charts. We disagree with you about that.
22 We think there are documents out there that can show
23 the existence or nonexistence of these things. Look
24 for them yourself when you receive them.

25 MR. MILLER: When can we expect to receive all

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1 of the documents necessary to, in your opinion, respond
2 to this interrogatory under 33(d)?

3 MR. MC CRUM: I don't know. Again, I'll get
4 back to you on Friday and see where we are on gathering
5 and producing those documents.

6 MR. KENNEDY: I think the fundamental issue is
7 that these are Vizio's own products, and Sony is not --
8 has not asked Vizio to perform some kind of
9 complicated, super technical analysis of these
10 products. It's to provide 11 simple features, and it
11 asks Vizio to identify which of those products
12 incorporate those features. I don't see how the burden
13 can be equal between the parties of identifying those
14 features under 33(d).

15 MR. MC CRUM: Well, I don't know what else to
16 say. I disagree with you that these -- you're asking
17 us to do an analysis of our products that can just as
18 easily be done by Sony. Essentially, asking us to do
19 Sony's work for it. We're going to give you the
20 information that we have that would allow you to obtain
21 this information, and it's -- our position is going to
22 be no harder for Sony to get that information from the
23 documents we'll produce.

24 MR. KENNEDY: What kinds of documents are we
25 talking about? Vizio produced user manuals and I

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1 believe two server manuals. Are you talking about
2 documents duplicative of those manuals?

3 MR. MC CRUM: The manuals will be some of the
4 documents we'll refer to in response to this. Is it
5 going to be all of them? I don't know yet.

6 MR. KENNEDY: I'm trying to imagine what kinds
7 of documents would possibly answer this interrogatory.

8 MR. MC CRUM: The user manuals are, at least,
9 one example of documents that will have responsive
10 information.

11 MR. KENNEDY: Will it have that information
12 for all of the products in Interrogatory Number 1?
13 That's what this interrogatory seeks. You mentioned
14 that we provided information in our claim charts, but
15 this interrogatory isn't directed to claim limitations.
16 It's directed to high-level product features;
17 therefore, what we put in our interrogatory response
18 relating to infringement, you know, isn't necessarily
19 implicated directly by this interrogatory. It's
20 different.

21 MR. MC CRUM: Well, it's seeking the same type
22 of things and same type of information -- menu displays
23 capable of displaying more than one color, more than
24 one brightness. You folks relied on things from our
25 user manuals, pictures of TVs and the menus and all of

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1 these types of things. Some of these things, if not
2 all, are readily available from our user manual
3 documents.

4 MR. KENNEDY: Why don't I give you an example
5 of one of the features that I don't think is going to
6 be disclosed in the documents for each product, and
7 that is letter B, which is, "Menu displays capable of
8 displaying in more than one level of transparency."
9 Certainly, in some of the user manuals, that is
10 apparent by looking at the manual. There are screen
11 shots that show transparency. For the vast majority of
12 Vizio products, there is no such screen shot. It's
13 impossible to tell by just looking at the user manual
14 whether or not there are transparency features
15 incorporated in those products. Unless you have
16 documents in mind that, actually, show the transparency
17 features, I don't possibly see how Rule 33(d) can get
18 you out of responding to this interrogatory in a
19 written format.

20 MR. CORR: You focused on B there. What other
21 ones don't you think can't be answered from user-type
22 materials?

23 MR. KENNEDY: I would have to look at these
24 and spend a few minutes with them. I don't know if I'm
25 able to answer that sitting right here.

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1 MR. CORR: I'm trying to get some insight into
2 the nature of this dispute here.

3 MR. PEASE: We want to know, for the sake of
4 completeness, that we've identified all products that
5 fall within each of these categories. The fact that we
6 identified some products from which you think we can
7 derive this information isn't sufficient. We want to
8 make sure that we identify all of the products that
9 Vizio makes that have Feature A, Feature B, Feature C.
10 We propounded the same interrogatory to Westinghouse,
11 and they fought us on it. And we moved to compel, and
12 they were ordered to produce this information. We'll
13 take a look at the documents you produce, but if it's a
14 matter of your engineers being able to identify these
15 products versus us having to sit down with our experts
16 and comb through your documents, that's not the same
17 burden on us as it would be on you. If it's easier for
18 you to do it and your engineers to do it, then we're
19 going to go back to the Court and insist that you
20 provide this information in a substantive interrogatory
21 response and not be permitted to just rely on Rule
22 33(d).

23 You guys relied on 33(d), but you didn't
24 produce documents to support the 33(d) response. It's
25 hard for us to say what this interrogatory response is,

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1 ultimately, going to look at because we haven't seen
2 the documents. Hopefully, you'll get them to us soon,
3 and we'll be able to move forward on this.

4 MR. MC CRUM: Why don't we do that. If
5 there's still an issue, then you can raise it with us
6 then. I don't see any reason to keep going around in
7 circles on this one. We're relying on documents.
8 We'll produce those as quickly as we can and go from
9 there.

10 MR. KENNEDY: I'm just curious. Again, with
11 respect to B -- letter B, does Vizio know of any
12 documents -- any type of documents that could list that
13 feature or show that that feature is incorporated into
14 each of Vizio's products?

15 MR. MC CRUM: Well, like I said, I know there
16 are user manuals that have -- that bear on this issue.
17 To the extent that they don't, we will be relying on
18 other documents that do.

19 MR. KENNEDY: What kinds of documents is my
20 question?

21 MR. MC CRUM: I don't know. We're still in
22 the process of gathering our documents. I do know we
23 have identified documents that have responsive
24 information including user manuals, the service
25 engineering documents as well. We will be identifying

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1 those.

2 MR. KENNEDY: Okay. Why don't we move on to

3 Interrogatory Number 14, which requests Vizio to

4 identify the digital television standards that its

5 products incorporate. The interrogatory specifically

6 gives as examples the closed captioning standards and

7 the standards for HDCP. It seems like a similar

8 dispute as with Interrogatory Number 11. Vizio is

9 relying on Rule 33(d). Again, we don't understand how

10 Vizio can possibly respond to this interrogatory just

11 by producing documents, and we'd like to have some kind

12 of idea of what kinds of documents Vizio thinks will be

13 responsive.

14 MR. MC CRUM: Well, again, I think that you

15 know our position. Obviously, we served these

16 responses, and we felt like this was an interrogatory

17 that we had documents on that were responsive. I did

18 not specifically prepare the response to this myself,

19 but we represented we had documents that are

20 responsive. Again, I'm beating a dead horse here, but

21 we will produce those as quickly as we can. If you

22 folks have an issue with it then, we can revisit it.

23 Before the documents, it's premature to be arguing

24 about this. I understand you want the documents now,

25 and I'm telling you the best we can do is we will get

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1 them to you as quickly as possible. The documents that

2 have responsive information are the ones that we are

3 endeavoring to get out to you first.

4 MR. MILLER: Can we expect a time certain on

5 the production of documents that you believe are

6 responsive to this interrogatory on Friday along with

7 the other days?

8 MR. MC CRUM: I'm not going to commit to

9 giving you a time certain. I hope we have a date by

10 which we can do that. I'm not going to commit to

11 something that I'm not in a position to commit to right

12 now.

13 MR. MILLER: Will we, at least, receive an

14 estimated time frame on Friday with the other documents

15 you're promising?

16 MR. MC CRUM: I don't know. I'll let you know

17 on Friday. I don't know what else to tell you.

18 MR. KENNEDY: I don't understand how Rule

19 33(d) is appropriate for this kind of interrogatory

20 because the interrogatory merely requests Vizio to list

21 the standards with which it complies. I assume there

22 is some employee at Vizio who is responsible for

23 ensuring that its products comply with these particular

24 standards. Why is it a burden for Vizio to simply have

25 conversations with that employee and provide that

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1 information in a written format?

2 MR. MC CRUM: I think you're making

3 assumptions about our client and the way they operate

4 and how they're structured that may not be entirely

5 accurate. I told you we've got documents that are

6 responsive to this interrogatory, and we're going to

7 identify those. I know it's hard for you to imagine

8 that there might be documents that are responsive.

9 What I'm telling you is they do exist, and we will

10 identify them.

11 MR. KENNEDY: Does Vizio employ anyone who is

12 responsible for ensuring that its products comply with

13 closed captioning standards or any other digital

14 television standards?

15 MR. MC CRUM: I feel like I'm in a deposition.

16 I don't know.

17 MR. KENNEDY: You've just represented you are

18 confident that there are documents responsive to the

19 interrogatory. I'm curious. What kinds of documents

20 are these?

21 MR. CORR: I think we're having the same

22 discussion on the earlier interrogatory. We'll get you

23 the materials. To the extent you don't think the

24 information is there, you can let us know. This is the

25 same question. I hate to object under asked and

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1 answered.

2 MR. KENNEDY: I understand that. I would like

3 to go down each interrogatory in order so the disputes

4 are clear on the record.

5 Why don't we move on to Interrogatory Number

6 18, which I think is an interrogatory over which we

7 have a similar dispute. That requires Vizio to

8 identify the industry and standard organizations that

9 it participates in.

10 Once again, Vizio is relying on 33(d). Sony's

11 position is that Rule 33(d) is an inappropriate

12 response to this interrogatory, which is a simple and

13 straightforward request that Vizio just identify the

14 organizations it participates in. I was hoping Vizio

15 could explain why Rule 33(d) is appropriate here.

16 MR. MC CRUM: Well, we think it's appropriate

17 because we have -- we have documents that provide

18 responsive information.

19 MR. MILLER: But that's only one half of the

20 33(d) equation. It, also, has to be equally burdensome

21 to Vizio, which, clearly, it isn't, if Vizio is

22 participating in these organizations, rather than

23 forcing us to comb through all of the documents and

24 assemble a complete list.

25 MR. MC CRUM: I will take this under

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1 advisement and talk to our client and whether we'll
2 provide a narrative answer to anything. I'm not going
3 to promise anything, but I'll get back to you on Friday
4 on this one.

5 MR. KENNEDY: Thank you.

6 MR. MC CRUM: You're welcome. Peter, did you
7 have any disputes you wanted to discuss?

8 MR. KLIVANS: To follow up on some of the
9 requests for production, you objected, in part, that
10 some responsive documents would be privileged or
11 otherwise protected, such as, Request for Production
12 55, 6 and 7, also, 82. So can we expect a privilege
13 log for those documents at a certain point in time?

14 MR. MC CRUM: Of course, any documents that we
15 feel too are responsive that are privileged we will
16 provide on a privilege log.

17 MR. MILLER: Have any such documents been
18 identified as of today?

19 MR. MC CRUM: I don't know.

20 MR. KLIVANS: Do you have any time frame on
21 when we will get a privilege log? Would it be around
22 30 days by the time we get your next production?

23 MR. CORR: This is Steve. Ryan, if you don't
24 mind, I'm going to jump in. As we collect documents
25 and pull them together, we'll give you a timely

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1 privilege log, but at this point, we're chasing a lot
2 of documents. So I don't know we'd have any more
3 ascertainment of when we're going to give you a
4 privilege log as we would the other documents. As we
5 uncover those documents, we'll give you a timely
6 privilege log. I don't know that we can commit at this
7 point until we identify those documents that we believe
8 are privileged.

9 MR. KENNEDY: I'm sorry to go back to the
10 third-party confidential information, but I don't
11 believe we asked you whether or not Vizio is logging
12 all of those third-party documents that it considers to
13 contain confidential information.

14 MR. CORR: I'm sorry. I'm not following you.
15 We were just talking about privilege.

16 MR. KENNEDY: I'm kind of going back to the
17 discussion about third-party documents that Vizio
18 believes contain confidential information. Vizio has
19 stated that it is going to withhold those documents
20 unless it gets permission from the third parties. My
21 question is whether or not Vizio is going to be
22 providing a log of documents from third parties that
23 may or may not be privileged that Vizio is withholding.

24 MR. MC CRUM: Under what theory are you
25 claiming that you're entitled to that?

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1 MR. KENNEDY: I don't have a case to cite to
2 you right now. The idea is that, if Vizio is
3 withholding documents that are responsive to Sony's
4 interrogatories -- I mean, Sony's position is that
5 Vizio is required to produce the documents. At the
6 very least, Sony would be entitled to see some kind of
7 list of documents that are being withheld; otherwise,
8 Sony wouldn't have any idea of what documents you're
9 not producing.

10 MR. MC CRUM: We can tell you the party's
11 information that we think may have a claim of
12 confidentiality. Until I see something convincing
13 otherwise that would require me to log that information
14 like a privilege log, I have no plans to provide that
15 at this time. Is that something you folks are planning
16 to do? Maybe we can talk about mutually how we're
17 going to deal with third-party information. Obviously,
18 it would be a reciprocal thing. We ought to talk about
19 some agreed-upon approach for handling that issue.

20 MR. KENNEDY: Well, again, I think we're going
21 to be discussing Sony's production and objections to
22 Vizio's request later on this week. We can certainly
23 talk about that then.

24 MR. MC CRUM: That's fine. We'll table it
25 until then.

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1 MR. KENNEDY: Does anyone else have anything
2 to discuss? Is everybody available Wednesday or
3 Thursday?

4 MR. MC CRUM: I think we're still checking on
5 that. We'll just try to get back with you, hopefully,
6 sometime today.

7 MR. KENNEDY: Okay. We are --

8 MR. MC CRUM: I'm, basically, wide open on
9 Wednesday and Thursday. I've kept my schedule clear.
10 The only potential conflict I have is 1:00 p.m. eastern
11 time on Wednesday; otherwise, we've kept our calendar
12 clear. Since we made the offer for the meeting, if you
13 can, let us know. I would appreciate it.

14 MR. KENNEDY: No problem. Okay. I think that
15 is the end of the meet and confer.

16 MR. MC CRUM: All right. Thank you all very
17 much, and I look forward to doing this again.
18 (Whereupon the proceedings
19 concluded at 1:09 p.m.)
20 - ooo -
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<p>1 Deposition Officer's Certificate</p> <p>2</p> <p>3</p> <p>4 I, BETH FELIX, hereby certify:</p> <p>5 I am a duly qualified certified shorthand reporter</p> <p>6 in the state of California, holder of Certificate</p> <p>7 Number CSR 12766 issued by the Court Reporters Board of</p> <p>8 California and which is in full force and effect. [FED.</p> <p>9 R. DIV. P. 28(A)].</p> <p>10 I am authorized to administer oaths or</p> <p>11 affirmations pursuant to California Code of Civil</p> <p>12 Procedure, Section 2093(B) and prior to being examined,</p> <p>13 the deponent was first duly sworn by me. [FED. R. CIV.</p> <p>14 P. 28(A), 30(F)(1)].</p> <p>15 I am not a relative or employee or attorney or</p> <p>16 counsel of any of the parties, nor am I a relative or</p> <p>17 employee of such attorney or counsel, nor am I</p> <p>18 financially interested in this action. [FED. R. CIV. P.</p> <p>19 28].</p> <p>20 I am the deposition officer that stenographically</p> <p>21 recorded the testimony in the foregoing deposition and</p> <p>22 the foregoing transcript that is a true record of the</p> <p>23 testimony given by the deponent. [FED. R. CIV. P.</p> <p>24 30(F)(1)].</p> <p>25 Before completion of the deposition, review of the</p> <p style="text-align: right;">Page 44</p>	
<p>1 transcript [] was [] was not requested. If</p> <p>2 requested, any changes made by the deponent (and</p> <p>3 provided to the reporter) during the period allowed are</p> <p>4 appended hereto. [FED. R. CIV. P. 30(E)].</p> <p>5</p> <p>6</p> <p>7 Dated: _____, 2009.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 _____</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 45</p>	

Deposition Officer's Certificate

I, BETH FELIX, hereby certify:

I am a duly qualified certified shorthand reporter in the state of California, holder of Certificate Number CSR 12766 issued by the Court Reporters Board of California and which is in full force and effect. [FED. R. DIV. P. 28(A)].

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(B) and prior to being examined, the deponent was first duly sworn by me. [FED. R. CIV. P. 28(A), 30(F)(1)].

I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in this action. [FED. R. CIV. P. 28].

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript that is a true record of the testimony given by the deponent. [FED. R. CIV. P. 30(F)(1)].

Before completion of the deposition, review of the

1 transcript [] was [] was not requested. If
2 requested, any changes made by the deponent (and
3 provided to the reporter) during the period allowed are
4 appended hereto. [FED. R. CIV. P. 30(E)].

5
6
7 Dated: May 29th, _____, 2009.

8
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11 Beth Felix
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EXHIBIT 8

JONES DAY

NORTH POINT • 901 LAKESIDE AVENUE • CLEVELAND, OHIO 44114-1190

TELEPHONE: (216) 586-3939 • FACSIMILE: (216) 579-0212

Direct Number: (216) 586-7291
rbmccrum@jonesday.com

May 6, 2009

VIA EMAIL

Todd M. Kennedy, Esq.
Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP
50 California Street
22nd Floor
San Francisco, CA 94111

Re: Sony Corporation v. Vizio Inc.

Dear Todd:

I am writing in response to your letter of April 29, 2009 to James Wamsley regarding alleged deficiencies in Vizio's discovery responses.

As an initial matter, we are surprised by the lack of care and attention that appears in your letter. It seems you have simply taken an old letter from the Westinghouse litigation – as evidenced by your request for *Westinghouse's* availability for a meet and confer – doctored it up, and sent it to Vizio without carefully reviewing Vizio's discovery responses. Particularly troubling are your complaints regarding information that was clearly provided to Sony. For example, you claimed that Vizio failed to even mention AmTran in response to Interrogatory No. 2, even though AmTran was identified in response to that interrogatory dozens of times as the supplier of numerous Vizio products. Furthermore, you accused Vizio of failing to identify specific models of Vizio's televisions, when the models from your letter are in fact identified. You also accused Vizio of failing to identify a single Video Processor or Graphics Processor, even though numerous processor models have been identified in Attachment A to Vizio's responses.

Furthermore, while Sony has objected to providing any 3rd party confidential business information ("CBI") before obtaining consent to do so, you have insisted Vizio produce such information before obtaining 3rd party consent. You have also insisted on Vizio providing claim constructions for all asserted claims (and originally did so before Vizio received any infringement contentions), even though Sony has taken the extraordinary position that no claim construction is necessary for any terms, despite the fact that numerous claim terms are in means-plus-function form. Such demands are inconsistent with Sony's own positions and are disingenuous.

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In the future, we ask that you closely review Vizio's discovery responses and consider Sony's positions on issues before firing off letters complaining about purported deficiencies in Vizio's discovery responses. The standards adopted by the Local Rules and Judge Klausner require at least as much, and we will certainly endeavor to do the same.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

You complained that Vizio failed to produce any documents with its discovery responses. Vizio is working diligently to gather and review documents and plans to make productions of confidential information on a rolling basis after a protective order has been entered. In the meantime, Vizio plans to make its first production of non-confidential information no later than Monday, May 10. Vizio is willing to agree to the production of documents for "Outside Attorneys' Eyes Only" provided Sony is willing to do the same. Please let us know.

It bears noting that Sony's first production consisted almost entirely of Vizio's own public documents and other public documents (patents and file histories), and Sony still has not produced documents from the Westinghouse litigation. Sony cannot expect Vizio to produce confidential documents prior to entry of a protective order when Sony has been unwilling to do the same. We are still awaiting Sony's comments on the draft protective order that Vizio provided.

You also demanded that Vizio produce documents containing 3rd party CBI before obtaining consent from those 3rd parties to produce such documents. As noted above, Sony has objected to producing 3rd party CBI before obtaining consent to do so (See Sony's General Objection No. 4 and response to Interrogatory No. 13). Consistent with Sony's objection, the law does not require production of 3rd party information prior to receiving their consent. The law cited in your letter at most suggests that 3rd party CBI may be discoverable. Vizio is taking steps to get consent from third parties to produce their CBI.

With regard to your requested inspection of "fully operational exemplar[s] of each of the Vizio Products," please be advised that Vizio does not have exemplars of all such products. For those products that it does have in inventory, Vizio is willing to arrange an inspection, and will provide a proposal for the date, time and protocol for such an inspection.

For Document Request Nos. 55-57, 64, 82, 106, 125 and 126, Vizio is standing on its objections. For Request Nos. 55-57 and 82, to the extent any documents exist, they are privileged. Request No. 64 is vague and ambiguous, and to the extent understood, does not appear to seek information reasonably calculated to lead to the discovery of admissible evidence. To the extent Vizio has "exemplars" responsive to Request No. 106, it will make those available for inspection pursuant to mutually agreed-upon terms. Request Nos. 125 and 126 are overbroad and vague and ambiguous to such an extent that Vizio does not understand what documents are being sought. Vizio requests that Sony clarify these requests so Vizio can determine if it has responsive, non-privileged documents, or otherwise objects to these requests on other grounds.

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INTERROGATORIES

Your contention that Vizio provided an incomplete list of relevant products in response to Interrogatory No. 1 is incorrect. Vizio did identify all relevant products to the best of its ability, including those identified in your letter:

VX20L HDTV1A is on page 3 of Attachment A.

L32 HDTV is on pages 6 and 9 of Attachment A.

L42 HDTV is on page 4 of Attachment A.

P42 ED is on page 4 of Attachment A.

P42 HDTV is on page 6 of Attachment A.

VP42 HDTV is on pages 6 and 9 of Attachment A.

VP50 HDTV is on pages 6 and 9 of Attachment A.

VM60P HDTV10A is on page 2 of Attachment A.

VO22L FHDTV10A is on page 6 of Attachment A.¹

Your claims regarding Vizio's response to Interrogatory No. 2 are wrong. You contend that "Vizio has not even mentioned" AmTran in its response, but even a cursory review of Attachment A (which was incorporated into Vizio's response to Interrogatory No. 2) shows that AmTran was identified numerous times as the "Vendor" of multiple Vizio products. As for "when" the products in Attachment A were manufactured and sold, Vizio is relying on documents that have responsive information. The burden of ascertaining this information from the documents that Vizio will rely on is substantially the same for Sony as it is for Vizio, and Vizio will identify such documents in a supplemental response as soon as they are produced.

With regard to Sony's Interrogatory No. 3 seeking Vizio's non-infringement contentions, there is nothing in the Local Rules or in any Order issued by the Court requiring Vizio to provide the requested **legal** contentions at this time. The parties are currently engaged in **fact** discovery,

¹ In the chart attached to Vizio's discovery responses, Vizio made a good faith effort to minimize any duplication of information. To that end, in very few instances, Vizio identified a model that is representative of other models in a family having substantially the same model number. For example, the VO22L FHDTV10A contains the same chip as the VO22L HDTV10A, so Vizio only identified the VO22L HDTV 10A.

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and this Interrogatory seeks **legal** and expert opinions which are generally disfavored at this stage of the litigation. *E-Bay Seller AntiTrust Litigation*, 2008 WL 5212170 (N.D. Cal.) (“Courts using their Rule 33(a)(2) discretion **generally disfavor contention interrogatories asked before discovery is undertaken.**”) As you know, Vizio proposed a detailed schedule by which legal contentions such as those requested by this Interrogatory would be exchanged. Vizio’s schedule followed the format set forth in Patent Rules adopted by other courts that are intended to facilitate the timely disclosure of these types of contentions. Sony rejected that approach. Accordingly, Vizio will provide the requested legal contentions in its expert narrative statements twenty-one days before the pre-trial conference in accordance with the Court’s Scheduling Order.

Alternatively, if you would like to discuss a mutually agreeable schedule by which legal contentions and expert opinions are to be exchanged, Vizio would be happy to do that. Agreeing to such a schedule would be in keeping with Judge Klausner’s remarks that the parties are in the best position to work out these issues in an orderly and amicable manner. Such a schedule would resolve these issues and related issues in their entirety and prevent the parties and the Court from having to waste valuable resources continuing to address such issues in the future.

It is also important to note that just last week was the first time Sony identified the claims it is asserting. Also, while Sony just recently provided Vizio with claim charts, those claim charts are very conclusory and incomplete, as will be outlined in a separate letter. It is premature to ask Vizio for its responses to infringement charges when it does not have a complete and comprehensive set of infringement charts from Sony. Sony has the burden of providing its infringement contentions, and the claim charts provided do not satisfy that burden.

As with Interrogatory No. 7, Sony’s Interrogatory No. 4 is premature in that it seeks Vizio’s **legal** contentions regarding claim construction during **fact** discovery. Again, Vizio proposed a schedule for an orderly exchange of claim terms in dispute and proposed constructions, which was rejected by Sony. Accordingly, claim construction will be conducted as part of summary judgment briefing as Sony requested, and the Court has ordered. At that time, Vizio will provide its proposed constructions as necessary. Vizio is still willing to discuss a mutually agreeable schedule for exchanging claim terms in dispute and proposed constructions if Sony is interested in that approach. Moreover, Sony cannot insist on Vizio’s proposed claim constructions when Sony has failed to provide complete and comprehensive infringement claim charts.

With regard to Sony’s Interrogatory No. 8 regarding sales information, Vizio will be relying on documents that have responsive information. The burden of ascertaining this information from the documents that Vizio plans to rely on is substantially the same for Sony as it is for Vizio. Vizio will produce these documents after entry of a suitable protective order (or as Outside Attorneys’ Eyes Only assuming Sony is willing to do the same), and will identify them in a supplemental response.

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Vizio will supplement its response to Interrogatory No. 10 to more specifically describe how it first became aware of the '373, '472 and '468 patents.

With regard to Sony's Interrogatory No. 11, Sony is improperly asking Vizio to do Sony's analytical work. Vizio will be relying on documents that have responsive information. The burden of ascertaining this information from the documents that Vizio plans to rely on is substantially the same for Sony as it is for Vizio. Vizio will produce these documents after entry of a suitable protective order (or as Outside Attorneys' Eyes Only assuming Sony is willing to do the same), and will identify them in a supplemental response.

Your claims regarding Vizio's response to Interrogatory No. 12 have no merit. Sony is not entitled to a set number of people most knowledgeable about certain topics. Vizio identified, in each case, a number of individuals most knowledgeable about the topics set forth in Interrogatory No. 12. By insisting on more names, Sony is improperly seeking duplicative discovery.

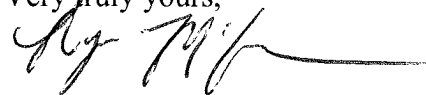
With respect to Interrogatory No. 13, you claim that Vizio has failed to identify even a single processor in its response. However, Attachment A to Vizio's responses set forth nearly all the processors used in Vizio's products by model number. Vizio will supplement its response to Interrogatory No. 13 to more clearly refer to Attachment A as having information responsive to this Interrogatory.

With regard to Sony's Interrogatory Nos. 14 and 18 regarding television standards and standards organizations, Vizio will be relying on documents that have responsive information. The burden of ascertaining this information from the documents that Vizio plans to rely on is substantially the same for Sony as it is for Vizio. Vizio will produce these documents after entry of a suitable protective order (or as Outside Attorneys' Eyes Only assuming Sony is willing to do the same), and will identify them in a supplemental response.

In view of the foregoing, Vizio does not believe that an in-person meet and confer is necessary. Nevertheless, if you still feel that a meet and confer is necessary, we are available May 15, 2009. If your question regarding Westinghouse's availability for a meet and confer was not simply a carryover from a letter in the Westinghouse litigation, we fail to see the need for them to attend any meet and confers.

Please feel free to call me if you would like to discuss this further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ryan B. McCrum", with a long horizontal flourish extending to the right.

Ryan B. McCrum

EXHIBIT 6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SONY CORPORATION, a
Japanese Corporation,

Plaintiff,

vs.

No. SA CV08-01135-RGK
(FMOx)

VIZIO, INC.,

Defendant.

MEET AND CONFER CONFERENCE CALL
Los Angeles, California
Monday, June 22, 2009

Reported by:
JULIE SEYMOUR
CSR NO. 12341
Job No. 115053

Page 1

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Page 3

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SONY CORPORATION, a
Japanese Corporation,

Plaintiff,

vs.

No. SA CV08-01135-RGK
(FMOx)

VIZIO, INC.,

Defendant.

Meet and Confer Conference Call held at
865 South Figueroa Street, 10th Floor, Los Angeles,
California, beginning at 6:10 p.m. and ending at
7:07 p.m. on Monday, June 22, 2009, before
Julie Seymour, Certified Shorthand Reporter No. 12341.

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EXHIBITS

- 1 Sony's First Set of Interrogatories to
Vizio
- 2.1 Vizio's Response to Interrogatory No. 3
- 2.2 Attachment A (Revised) Vizio's First
Supplemental Response to Sony's
Interrogatory Nos. 2, 3, 8, 10, 11, 14, 18
- 2.3 Vizio's Response to Interrogatory No. 3
Non-Infringement Claim Chart 472 Patent
- 2.4 Vizio's Response to Interrogatory No. 3
Non-Infringement Claim Chart 542 Patent
- 2.5 Vizio's Response to Interrogatory No. 3
Non-Infringement Claim Chart 577 Patent
- 2.6 Vizio's Response to Interrogatory No. 3
Non-Infringement Claim Chart 614 Patent
- 2.7 Vizio's Response to Interrogatory No. 3
Non-Infringement Claim Chart 626 Patent
- 2.8 Vizio's Response to Interrogatory No. 3
Non-Infringement Claim Chart 847 Patent
- 2.9 Vizio's Response to Interrogatory No. 3
Non-Infringement Claim Chart 373 Patent
- 2.10 Vizio's Response to Interrogatory No. 3
Non-Infringement Claim Chart 468 Patent
- 2.11 Vizio's Response to Interrogatory No. 3
Non-Infringement Claim Chart 055 Patent
- 2.12 Vizio's Response to Interrogatory No. 3
Non-Infringement Claim Chart 182 Patent
- 3 Letter to James Wamsley from Todd Kennedy,
Dated April 29, 2009
- 4 Letter to Todd Kennedy from Ryan McCrum,
Dated May 6, 2009
- 5 Letter to Ryan McCrum from Todd Kennedy,
Dated May 26, 2009

Page 4

1 (Pages 1 to 4)

EXHIBITS (Continued)

6 Letter to Todd Kennedy from Ryan McCrum,
Dated May 28, 2009

7 Letter to Ryan McCrum from Todd Kennedy,
Dated June 3, 2009

8 Letter to Steven Corr from Todd Kennedy,
Dated June 4, 2009

9 Letter to Todd Kennedy from Ryan McCrum,
Dated June 5, 2009

10 Letter to Ryan McCrum from Todd Kennedy,
Dated June 12, 2009

11 Letter to Todd Kennedy from Ryan McCrum,
Dated June 19, 2009

(The exhibits were subsequently
sent electronically to the court
reporter and are attached hereto.)

Page 5

1 identify for each tubed television which of 11 features
2 it incorporates, and the interrogatory identifies each
3 of those 11 features. And Vizio's response has been to
4 invoke Rule 33(d) and point to documents instead of
5 actually listing the televisions and listing which
6 features each television incorporated.

7 And Sony's position is that 33(d) is an
8 inappropriate response to this interrogatory because
9 these are Vizio televisions and the burden would be much
10 greater for Sony than for Vizio to determine which of
11 the features each television incorporates.

12 MR. MCCRUM: This is Ryan McCrum for Jones Day. I
13 think we have gone back and forth and I think we have
14 both set our positions out pretty clearly in the
15 letters. But just to kind to summarize where we stand
16 on this, as I stated in my letter June 19, these are
17 features that Vizio does not track in the ordinary
18 course of its business.

19 And so what we would need to do in order to
20 attempt to answer this interrogatory -- and I will get
21 to another point later where we don't really understand
22 what it is that Sony is seeking here, but assuming we do
23 understand some portion of it, these are not features
24 that we track and it would require Vizio to go back and
25 thoroughly review a number of its documents that

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1 LOS ANGELES, CALIFORNIA, MONDAY, JUNE 22, 2009
2 6:10 p.m. - 7:07 p.m.

4 MR. MILLER: Okay. Well, with everyone here, let's
5 go ahead and begin. As usual, guys, the standard
6 telephone rules apply. Before you begin talking, please
7 try to say your name for the court reporter. We do our
8 best here to signal to her who everyone is because it
9 does help to keep the record clean, but try to remember.

10 So to start with, this is Rory Miller from
11 Quinn Emanuel Los Angeles on behalf of Sony.

12 MR. PEASE: Tom Pease for Quinn Emanuel New York on
13 behalf of Sony.

14 MR. KENNEDY: Todd Kennedy Quinn Emanuel
15 San Francisco on behalf of Sony.

16 MR. KLIVANS: Peter Klivans Quinn Emanuel
17 San Francisco on behalf of Sony.

18 MR. CORR: Steve Corr Jones Day Los Angeles on
19 behalf of Vizio.

20 MR. MCCRUM: Ryan McCrum Jones Day Cleveland on
21 behalf of Vizio.

22 MR. KENNEDY: This is Todd Kennedy. Why don't we
23 get started with Interrogatory No. 11. And as you know,
24 this is the party's second meet and confer on this
25 interrogatory. The interrogatory requested Vizio

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1 potentially operate the TVs that it has in its
2 possession. And these are exactly the same things that
3 Sony can do to try to determine whether or not these
4 features are available.

5 Our position is that the burden of doing that,
6 given that these are not normally tracked, is the same
7 or probably less on Sony than it is on Vizio. We are
8 willing to make whatever information available as
9 necessary for Sony to feel comfortable answering this
10 interrogatory. We will give you all of the documents
11 that we would need to review. We will let you operate
12 whatever TVs we have in our possession. We will be
13 putting witnesses up to answer these questions. But
14 these just are not things that we normally track in the
15 ordinary course of our business. And for over 100
16 products, it would be an extremely difficult and
17 burdensome task for us to try to figure out which ones
18 have these various features.

19 Now, the other problem with this which I
20 mentioned is, you know, we have these 11 features and we
21 objected to them as vague and ambiguous. And as I said
22 in my letter, we really don't know what it is that Sony
23 is seeking because there are arguably a number of ways
24 to interpret these quote/unquote features.

25 So rather than have us try to guess at what it

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! (Pages 5 to 8)

1 is that you're looking for -- like I said, we're not
2 going to hide anything, we're going to give you
3 everything that we would have at our disposal for you to
4 look at and review and find out for yourself whether or
5 not they have the features that you're looking for.

6 So that's our position on this right now.

7 MR. KENNEDY: This is Todd Kennedy. And I think we
8 understand that Vizio has two different categories of
9 objections. And I just want to talk about the second
10 one first, which is Vizio's position that these
11 features, the way that they are worded in the
12 interrogatories are vague and ambiguous. And I wanted
13 to point out that this is the first time that Vizio has
14 raised that issue. I mean, this issue was initially
15 tee'd up in the April 24 letter to Vizio. And Vizio
16 responded on May 6 in a letter and did not raise that
17 issue at all. And then the parties had a meet and
18 confer on May 11, and again Vizio didn't raise that
19 issue at all. In fact Vizio said it would be producing
20 documents that it felt would be responsive to each of
21 those features.

22 So I don't understand how back then Vizio felt
23 that the request was clear enough to actually answer
24 with documents and now all of a sudden Vizio thinks that
25 the request is vague and ambiguous.

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1 objection. We had this objection from the very
2 beginning, you know, and that's a problem. We answered
3 the interrogatory.

4 I'll also note that the documents that we
5 relied on are the same exact types of documents that
6 Sony is relying on entirely for at least some of the
7 patents in its infringement contention. So we don't
8 really understand how Sony can take the position in
9 making its infringement contentions that these documents
10 are adequate to disclose the features of the claims and
11 then on the other hand say for a much broader set of
12 features say that these documents are not adequate.

13 And if you wouldn't mind explaining to me how
14 those two positions are consistent, I would be
15 interested in knowing what Sony's position is on that.

16 MR. KENNEDY: Well, obviously, we're here to talk
17 about Vizio's responses to Sony's interrogatories, but
18 just to quickly address that point, I'll say that at
19 bottom we are talking about Vizio's products and the
20 information is in Vizio's possession and not Sony's
21 possession; so that's what the difference is.

22 And I guess that would bring us to your second
23 objection which is that Vizio apparently doesn't know
24 which of these feature its televisions embody. And I
25 don't understand how that could possibly be the case

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1 MR. MCCRUM: This is Ryan. Well, if I could
2 respond to that we informed you, Todd, in our initial
3 response that we served. We objected that, quote:

4 "Vizio objects to this
5 interrogatory as vague and ambiguous and
6 its listed products features are
7 unclear. For example, it is unclear
8 whether menu displays capable of
9 displaying more than one level of
10 transparency is intended to mean that
11 the level of transparency of an entire
12 menu can be changed over time or whether
13 different parts at a given moment in
14 time have different levels of
15 transparency."

16 We then went on to say:

17 "This ambiguity and others apply to
18 many other listed product features."

19 Now, subject to those objections, we
20 indicated that we would provide an answer. And we
21 supplemented, as we said we would, and we provided an
22 answer and we cited the documents to the best that we
23 could.

24 So I don't know where you have a basis in
25 saying that this is the first time that we raised this

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1 given the fact that these features are simple and the
2 fact that Vizio is the one that is selling its own
3 televisions and public information that shows that Vizio
4 is involved in the design of its own televisions.

5 MR. MCCRUM: Well, you know, there may be some
6 truth to the statement that we sell televisions and at
7 some level may be involved in the development. But as I
8 mentioned, these features are not the subject of any
9 information that is tracked at Vizio, whether it be
10 through development or selling or through marketing and
11 things like that beyond what is in our user manuals.
12 So, yeah, they may be simple features; and if
13 they are, that's how Sony is interpreting these things
14 and they should be readily apparent from reviewing our
15 documents and inspecting our products.

16 And, you know, the other thing that is equally
17 important here, if not more so, is we're not going to
18 answer an interrogatory that we don't know what it is
19 that you're looking for. We're not going to risk saying
20 that we have something that quote/unquote securely
21 transfers information and then have you come back and
22 say, aha, they said securely transfer and that means
23 that it encrypts and that infringes this limitation of
24 the reissue patents, when we have a certain
25 understanding of securely transfers that may be totally

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3 (Pages 9 to 12)

1 different from yours. And it's unclear from the
2 interrogatory how Sony is defining some of these terms
3 and what it means by some of these things.

4 MR. PEASE: This is Tom and let me just jump in
5 here for a second. You know, on some of them, we just
6 don't understand your position, like closed captioning,
7 subtitle information. It ought to be a simple matter
8 for Vizio engineers to figure out which Vizio products
9 allow closed caption information to be transmitted. We
10 suspect it's all of them and we're looking for you to
11 confirm that.

12 And we have a couple reasons for doing that.
13 One, you know, it's just relevant to how we segregate
14 the products in our own minds going forward for the
15 various different issues that are presented by this
16 case, but we want to make sure we have captured all of
17 the products that are out there. Vizio makes products
18 that provide closed caption information that allows
19 closed caption information to be displayed on its TV
20 screen. And we want to make sure -- that was one
21 allegation and we want to make sure that we know about
22 all of them. You guys say you don't know what close
23 captioning means, well, we don't think that's a
24 reasonable position.

25 The same thing with you talk about securely

Page 13

1 transfer. You know, none of these are claim
2 limitations, per se. I mean, they would generally --
3 could be to the fields of the patents, but none of them
4 are claim limitations. I mean, that's the exact
5 argument that Westinghouse made and lost on in the last
6 case. They said that if they answered this and allowed
7 it to be would be tantamount to admitting infringement
8 and Magistrate Judge Olin didn't buy that.

9 MR. MCCRUM: Well, part of the argument that we're
10 making, Tom, I mean securely transfer, do you want to
11 tell me what that means.

12 MR. PEASE: Well, I think it's clear what that
13 means. I mean, I don't have it in front of me exactly
14 the language, but, you know, if you want to hedge it and
15 explain what you understand it to mean. And we think
16 we're entitled to know which products, for example, are
17 compliant with, you know, HDMI connections and which
18 one's have DBI connectors.

19 MR. MCCRUM: Well, that is readily apparent from
20 our user manuals and that is something you can very
21 easily look at and confirm for yourself.

22 MR. PEASE: Well, number one, we don't know that we
23 even have all the manuals. We don't know that you have
24 identified all of the products. It's where you guys are
25 going to go through and tell us every single product

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1 that Vizio makes that allows closed caption information
2 and that's part of the purpose of this interrogatory.

3 MR. MCCRUM: Well, we have. We've given you a
4 chart that we've -- that's based on currently available
5 information. We have given you the identity of every
6 single one of the TVs that we understand to be accused
7 and we have identified to the extent available all
8 corresponding user manuals and service manuals in our
9 possession.

10 MR. PEASE: Okay. So now the next step is talk to
11 your engineers and confirm, for example, that those
12 products are capable of allowing closed caption
13 information to be displayed or whatever the exact
14 wording is of the interrogatory --

15 MR. MCCRUM: Well, there's a lot more than --

16 MR. PEASE: -- it's a simple matter.

17 MR. MCCRUM: -- and just --

18 MR. PEASE: That's just one feature and you can
19 probably confirm that with one phone call with somebody
20 knowledgeable at Vizio. It's not a matter of combing
21 through the service manual, just one phone call.

22 MR. MCCRUM: Well, I beg to differ with you. You
23 know, that's not the way that Vizio operates. If it
24 were that easy for that particular feature, then maybe
25 we would be able to accommodate your request, but it's

Page 15

1 not as simple as that unfortunately. As you know or may
2 know or should know by now, Vizio does not -- it's not
3 in the business of designing and developing televisions.
4 They sell televisions. They market televisions. But
5 you're going to -- to figure out these features, you're
6 going to have to go talk to some other entities, which
7 is what, I believe, your third-party subpoenas are
8 intended to go out and do.

9 MR. PEASE: Well, we do have document requests
10 outstanding that ask for the specifications that Vizio
11 provides to its -- the companies that put -- make it for
12 it like the AmTrans of the world. I don't know that we
13 have seen any of those documents yet, but I suspect that
14 in those specificities are a lot of the features that
15 are the subject of Interrogatory No. 11. Closed
16 captioning, for example, you know, closed captioning, my
17 understanding is it's required by federal law. It
18 should be a simple matter for somebody at Vizio to
19 confirm that closed caption information is -- can be
20 seen on a Vizio TV.

21 Well, anyway, I just think we have reached a
22 log jam here. I don't think we're going to be able to
23 resolve this during the course of the call. We think
24 Vizio should go through and tell us which of its
25 products have these features and it sounds like your

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1 (Pages 13 to 16)

1 position is Sony and its lawyers should go look at the
2 service manuals and user manuals.

3 MR. MCCRUM: Yeah, and it's twofold. We have given
4 you everything that we have to look at to determine
5 whether or not we can even try to see whether these
6 features are in Vizio's products. We have to go through
7 those. And to do so thoroughly and extensively, it
8 would take a lot of time and effort and the burden of
9 doing that is exactly the same for Vizio as it is for
10 Sony.

11 And beyond that, like I said, we simply don't
12 understand what nearly all of these limitations are
13 seeking. So, you know, that's the problem. I mean, we
14 don't know what these features even mean, what you're
15 looking for. So why should we try to read your mind and
16 figure out what these limitations and features are when
17 you know exactly what you're looking for and we're going
18 to give you everything in our possession that we have
19 for you to make that analysis and determination.

20 MR. PEASE: Okay. Well, we don't think that's a
21 fair way to do it. We think it would be a simple matter
22 for you to simply check with your engineers. They could
23 check the sources that are available to them. And a lot
24 of these could be resolved, we think, in probably five
25 or ten minutes. I don't think a Vizio engineer is going

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1 to need to go through every single user manual and
2 service manual to answer these questions.

3 MR. MCCRUM: For over 100 products?

4 MR. PEASE: Yeah, that's right.

5 MR. MCCRUM: And you think --

6 MR. PEASE: No, it's not a matter of memorizing
7 them. A lot of them share the same chips. A lot of
8 chips fall within the same class of families. So all,
9 for example, media-type chips may be -- may allow the
10 processing of closed captioning information. I suspect
11 they do given that civil law requires TVs to be able to
12 display closed caption information.

13 MR. MCCRUM: Well, we have over 100 TVs and you're
14 asking us for each and every one of over 100 to
15 determine whether or not there are 11 features present?
16 And to think that that is just in the memory and
17 knowledge of our engineers and readily available is just
18 unreasonable. It requires a lot more work than that.
19 And I mean beyond that, you know, what you guys mean by
20 menu displays capable of displaying in more than one
21 color and more than one brightness, does that mean you
22 can have a menu displayed in more than one color, you
23 can have it red at one period in time and then you can
24 change the color to blue a day later, is that what that
25 means?

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1 MR. PEASE: We think it's clear on its face what it
2 means.

3 MR. MCCRUM: Well, it's not clear to me, Tom. Tell
4 me if it means that.

5 MR. PEASE: Well, I don't know whether it means
6 that or not. We'll talk amongst ourselves; and if we
7 can give you more information on that, we'll do it. But
8 to me, that's clear on its face.

9 MR. MCCRUM: Well, you can't give me -- you can't
10 even answer me that question. What about transparency,
11 menu display capable of displaying in more than one
12 level of transparencies? Okay?. So does that mean today
13 I can look at it and it displays with 60 percent
14 transparency and then tomorrow I have the ability to
15 change it to 80 percent transparency? Are you looking
16 for those TVs? Is that what that means?

17 MR. KENNEDY: Ryan, this is Todd. I mean, you can
18 try to pick apart this very simple language as much as
19 you would like. But a fair response to this
20 interrogatory would require you then to define what
21 Vizio believes the interrogatory to be asking for and
22 then provide some sort of response. And Vizio hasn't
23 even tried to do that. I'm not satisfied that there is
24 any way that we could define these terms in a way that
25 would satisfy Vizio enough to withdraw it's vague and

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1 ambiguous objections. I think that no matter how we
2 define these terms, Vizio is going to still point to
3 Rule 33(d) and refuse to provide us with a narrative
4 response and say that the terms are vague and ambiguous.
5 MR. MCCRUM: Well, I don't know, but I don't think
6 that it should be Vizio's burden to go through and
7 interpret -- try to interpret what Sony is meaning. I
8 have asked you some specific questions here and you guys
9 are not even willing to tell me whether or not these
10 interpretations are what you had in mind.

11 MR. PEASE: I mean -- this is Tom. You're asking
12 me for the first time in this phone call. We have
13 exchanged correspondence on this and you didn't present
14 those questions beforehand. I don't have the patent in
15 front of me, I'm not in the office right --

16 MR. MCCRUM: Well, apparently --

17 MR. PEASE: -- and I'm not going to answer that
18 without thinking about it. But the fact is we think the
19 terms we used in that interrogatory and the features we
20 defined are clear and unambiguous on their face. You
21 know, we're here and now you have these specific
22 questions. Why didn't you give us those questions
23 beforehand and we could have thought it out and given
24 you a response?

25 MR. MCCRUM: Well, I would have thought that having

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1 laid them out in my letter, you would have thought about
 2 them before this meet and confer. These questions that
 3 I'm asking you I'm reading from the letter sitting in
 4 front of me that I sent you last Friday. And I'm not
 5 going to try to read your minds about what these things
 6 mean, only to have you hold them against me and say,
 7 aha, they said they had a menu display capable of
 8 displaying a submenu or subordinate menu, which is a
 9 limitation, a feature of the 373 patent, they admitted
 10 they infringed. And we're sitting here saying no, no,
 11 no, that was something that we interpreted differently.
 12 We're not going to have that happen. I'm sitting here
 13 asking these specific questions that I already provided
 14 to you in advance of this call and no one can tell me
 15 whether or not these features mean what we think they
 16 mean on their face or something else.

17 MR. KENNEDY: Ryan, this is Todd. Let's look at
 18 one of these in particular, which is letter (d), and
 19 that is the capability to superimpose captions on
 20 another image or on a background. And in Vizio's
 21 letter, Vizio complains that it's unclear what is meant
 22 by the term captions. Captions is a simple term. It's
 23 one that is not debatable in terms of its meaning. Can
 24 you explain how the word captions is ambiguous?

25 MR. MCCRUM: Well, all I'm willing to say on this

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1 is that when we attempted to look into this
 2 interrogatory, we had a question from someone at Vizio
 3 who asked us what is the difference between captions and
 4 subtitles. Some people might interpret these things to
 5 mean the same thing and some people might interpret them
 6 to mean different things. So that raised the question
 7 in our mind if someone working in this industry can't
 8 pinpoint a definition for these things, I'm certainly
 9 not going to try to, and it was ambiguous to us.

10 MR. PEASE: Well, I'm just asking you how do you
 11 think captions and subtitles are different?

12 MR. MCCRUM: I don't know, that's why I have it in
 13 my letter. I'm not sure if they're different. Why
 14 don't you tell us.

15 MR. KENNEDY: In letter (d), the feature that I
 16 just read to you doesn't even mention subtitles.

17 MR. MCCRUM: Well, (e) does. How do they differ?
 18 That is a define terms. Tell me what caption means and
 19 tell me what subtitles mean.

20 MR. PEASE: This is Tom. All you had to do then
 21 was answer based on what your experts said. You could
 22 have said we -- it has -- our TVs allow caption and
 23 subtitles to be displayed, unless of course subtitles
 24 means "X," which it could mean according to our experts;
 25 and therefore, if it means "X" and if it doesn't if

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1 that's the answer. You could have answered this very
 2 easily even in light of your expert's comment about his
 3 view of the difference between caption and subtitles.
 4 There's no reason not to answer the interrogatory.
 5 Answer it in a way that lays out your concerns.

6 MR. MCCRUM: Well, that's part of the problem. I
 7 don't want to be guessing about what you guys mean and
 8 don't mean and take the risk that it is going to be
 9 taken out of context and have all these disclaimers
 10 that -- you know, captions in view means "X," "Y," and
 11 "Z" and not to be interpreted to mean this. We are
 12 giving you everything that we would have to look at to
 13 determine if these features are available in our
 14 products.

15 You know what you're looking for, we don't.
 16 The burden is the same. You have been unable to tell me
 17 for any of these features what -- these questions about
 18 them, you have been unable to tell me what the meaning
 19 is. I'm not, on behalf of the client, going to risk
 20 going out and answering a vague and ambiguous
 21 interrogatory that is going to be wholly held against us
 22 when we've adequately given you the documents and the
 23 products that you will need to answer this
 24 interrogatory.

25 MR. KENNEDY: Does anyone else have anything else

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1 to say about this one?

2 MR. PEASE: I just want to address the comment you
 3 made earlier about our reliance on the user manuals in
 4 our interrogatory response. I mean, we intend to rely
 5 on that testimony. We will intend to rely on the
 6 analysis of the chip, the force code as necessary, and a
 7 lot of other stuff besides user manuals. So when you
 8 say that our infringement position is entirely grounded
 9 in the user manuals just -- that's not a fair
 10 characterization at all.

11 We have given you infringement contentions
 12 based on the user manuals because that is what you have
 13 produced to date. And you asked us to supplement those
 14 infringement contentions with specific focus on the user
 15 manuals. We have done that and now we're going back and
 16 looking at the service manuals and the other information
 17 that's available to Sony. It may not be germane to the
 18 ultimate question of this interrogatory, but I want to
 19 state that for the record.

20 MR. MCCRUM: That's fine and you're free to go back
 21 and look at our service manuals that we identified and
 22 the products that we're making available for inspection
 23 and determine whether these features that you have in
 24 mind are in our products. We're giving it all to Sony.
 25 We're not holding anything back.

Page 24

5 (Pages 21 to 24)

1 MR. PEASE: Well, that's not true because you're
2 not making your engineer available to us. I guarantee
3 if you ask the engineer, they'll be able to tell and
4 confirm that every one of your products allows closed
5 caption information to be displayed.

6 MR. MCCRUM: We did make him available on the 7th,
7 8th, and 9th and Sony indicated that those were not good
8 dates.

9 MR. PEASE: They were not good dates because we
10 have very few of your documents at this point. So far
11 we haven't seen any source code. There is a lot of the
12 documentation that we haven't seen yet.

13 MR. MCCRUM: We don't have any source code, Tom.
14 We have given you -- we're almost done with our document
15 production. We're going to give you everything that you
16 need that we have in our possession to answer this
17 interrogatory to the extent that it even can be answered
18 with knowledge in Vizio's possession.

19 MR. KENNEDY: Okay. Should we move onto No. 14?
20 Okay. No. 14 requested Vizio for each of its
21 televisions, identify all of the additional television
22 standards with which it complies. And the interrogatory
23 specifically lists a number of standards, including
24 EIA-708-B, which is the closed captioning standard and
25 it also lists the high-bandwidth digital content

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1 protection system revision 1.3, which is the HDCP
2 standard. And Vizio again has pointed to Rule 33(d) and
3 has not given any sort of narrative response or listed
4 any of the digital television standards with respect to
5 any of its televisions.

6 And Sony's position, again, is that
7 Rule 33(d) is an improper way of responding to this
8 interrogatory because Vizio should have this information
9 easily within its possession.

10 MR. MCCRUM: This is Ryan. I disagree that we have
11 not identified any standards. We said that as shown in
12 the product literature that our products are operable to
13 receive and display television signals to be encoded
14 according to the following signal standards NTSC and/or.
15 We also said that certain of Vizio's televisions also
16 include -- we also note the DVI and HDMI interfaces as
17 well as circuitry capable of receiving QAM, DTVCC, an/or
18 HDCP signals.

19 So the first note I wanted to make is that we
20 did in fact identify standards in our response. So,
21 Todd, maybe you can explain specifically what the issue
22 is that you have with our answer so that we can discuss
23 whether or not there's anything we can do to alleviate
24 the concerns that you have.

25 MR. KENNEDY: Sure. Let's start with the response

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1 that you just quoted. The response actually says that:

2 "Certain of Vizio's televisions
3 also include, among other things, DVI or
4 HDMI interfaces, as well as circuitry
5 capable of receiving QAM, DTVCC, and/or
6 HDCP signals."

7 That is not responsive to the
8 interrogatory which requires Vizio to actually identify
9 for each of its televisions which are the standards it
10 incorporates. And Vizio's answers that certain of its
11 televisions include some standards is simply not
12 responsive.

13 MR. MCCRUM: Well, we also refer to our Attachment
14 A which, again, lists all the included televisions as we
15 presently understand that term and the user manuals and
16 service manuals that we have in our possession on a
17 product-by-product basis. And our position is that you
18 can look at our user manuals and determine readily
19 whether they're the DVI or HDMI interfaces associated
20 with those.

21 MR. KENNEDY: This is Todd. Sony has done that and
22 Sony has been unable to determine whether or not Vizio's
23 televisions incorporate certain standards. And one is
24 the EIA-798-B, which is listed specifically in the
25 interrogatory. Vizio doesn't even mention that standard

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1 in its response. And as far as we can tell, there are
2 absolutely no documents that mention that standard.

3 MR. MCCRUM: Well, my letter on that, Todd, told
4 you that with regard to the specific versions of these
5 standards and whether Vizio products comply with any,
6 some or all of the multiple of specific portions of
7 these various versions of the standards, that
8 information is not within the knowledge of Vizio. So if
9 you're trying to figure out which specific versions of
10 the standards that Vizio purportedly complies with,
11 that's information that we don't have. We have gone to
12 Vizio. We have asked for it. And they have told us
13 that they do not know.

14 MR. KENNEDY: This is Todd. I have a lot of
15 difficulty understanding how that could possibly be the
16 case because, as I pointed out in my last letter to you,
17 the 47 CFR 15.122-B requires that certain televisions
18 conform to EIA-708-B. So I'm having difficulty
19 understanding how Vizio would not know whether or not it
20 has complied with that regulation.

21 MR. MCCRUM: Well, like I said earlier, Vizio is
22 not making the chips that are used in these things and
23 cannot say under oath that their TVs do in fact comply
24 with any various versions. Again, that is something
25 that we would have to discuss with the chip suppliers

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7 (Pages 25 to 28)

1 and ask that question directly to them. And, you know,
2 we haven't done that.

3 MR. KENNEDY: So what you're telling me then is
4 that Vizio does not know whether or not it complies with
5 47 CFR 15.122-B; is that correct?

6 MR. MCCRUM: Yeah. Does it intend to comply with
7 it? You know, that may be a different question. But
8 does it in fact comply with it? Has Vizio analyzed the
9 circuitry and the chips to determine whether or not they
10 do in fact comply with those standards? No, it has not.

11 MR. KENNEDY: Does Vizio employ anyone who is
12 responsible for ensuring that its televisions conform
13 with all the applicable laws and regulations?

14 MR. MCCRUM: I don't think they do.

15 Steve, I know we have asked this question of
16 Vizio and maybe you're in a better position to say. Is
17 that correct? We do not have someone specifically
18 employed to know whether or not we use specific versions
19 of standards?

20 MR. CORR: Yes, that's true, Ryan. But the point
21 from Todd that somehow implies that Vizio is supposed to
22 have someone that knows, I'm not sure is germane here.
23 We have done the research for this interrogatory. And
24 the fact that it complies with federal standards that
25 may supersede or be an umbrella standard to the specific

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1 standards that Todd is looking for doesn't necessarily
2 imply that Vizio doesn't have someone or doesn't have
3 knowledge related to the overarching standard. But the
4 fact that Todd is asking about a specific standard that
5 may be encompassed by an overarching standard, the
6 specific answer to that question is no, Vizio does not
7 have someone who would be knowledgeable with that
8 information.

9 MR. KENNEDY: This is Todd. I'm not asking about
10 any overarching standard. I'm just referring to the
11 exact same standards and the exact same version of the
12 standards that identifies specifically and the
13 regulations.

14 MR. MCCRUM: Well, that's a version of a larger
15 standard, right?

16 MR. KENNEDY: The standard is EIA-708-B. And
17 that's the document this lists all kinds of different
18 ways to perform closed captioning. I mean, that
19 document stands by itself as a standard. And in fact
20 the regulation specifically requires that standard and
21 that document to be practiced by television.

22 MR. MCCRUM: Well, our understanding is that that
23 is a version of a larger standard.

24 MR. KENNEDY: That may be true, but the regulation
25 requires that that version be practiced.

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1 MR. MCCRUM: Okay. Well, I understand -- as I
2 mentioned, Vizio does not design and develop the chips
3 to know exactly how they function and whether or not
4 they are in fact complying with that standard. No one
5 at Vizio is in a position to say that.

6 MR. KENNEDY: So you're representing that when
7 Vizio orders its televisions, it doesn't confirm that
8 these televisions, in fact, follow the law?

9 MR. MCCRUM: It does not analyze its products to
10 determine whether or not it practices any standards.

11 MR. KENNEDY: And you're representing that Vizio
12 doesn't employ anyone who is responsible for that?

13 MR. MCCRUM: Responsible for what?

14 MR. KENNEDY: For ensuring that Vizio televisions
15 comply with standards required by the law such as
16 EIA-708-B.

17 MR. MCCRUM: Say that again.

18 MR. KENNEDY: Are you representing that Vizio does
19 not employ anyone to ensure that its televisions comply
20 with the applicable regulations that require particular
21 standards to be practiced such as EIA-708-B?

22 MR. MCCRUM: I do not believe that they do and I
23 can go back and check with our client to make sure if
24 you would prefer me to do that and I would be happy to
25 do that. But my current understanding is that, no, they

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1 do not have someone specifically responsible for
2 ensuring that its products comply with certain
3 standards.

4 MR. KENNEDY: This is Todd. I don't understand
5 because at the last meet and confer on May 11, I asked
6 you this exact question and your answer was I don't
7 know. And now your answer seems to be, no, probably
8 not; but I can go back and check. So have you had any
9 communications with Vizio about this particular issue
10 since our last meet and confer?

11 MR. MCCRUM: Yes, I have. And I'm not willing to
12 get into the details because they are attorney/client
13 privilege, but we have been talking to our client in
14 detail about this interrogatory, I can assure you of
15 that. And I have already told you what we have since
16 found. And now you're asking me a very specific
17 question about whether or not we employ somebody
18 specifically responsible for ensuring that certain
19 versions of standards are met. And that was a question
20 I have not asked. Maybe Steve has asked it, actually.
21 I think we did ask that question, and the answer is no;
22 but that's what I need to confirm.

23 MR. KENNEDY: I don't know what else to say about
24 this one. Anyone else have anything to add?

25 (No response.)

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(Pages 29 to 32)

1 MR. MCCRUM: Well, I will go back and ask that
2 specific question for you, Todd, if that's something you
3 would like me to do.

4 MR. KENNEDY: I did want to discuss the other
5 standard that we're particularly concerned about which
6 is HDCP. And I believe it's Vizio's position that it
7 did not know which version of HDCP its televisions
8 practice; is that correct?

9 MR. MCCRUM: Right.

10 MR. KENNEDY: I'm curious about that one, as well,
11 because on Friday Vizio sent a letter to Sony alleging
12 that Vizio has a license to practice the HDCP standard,
13 which seems to me to be inconsistent with Vizio's
14 position here that it doesn't know whether it practices
15 the standard.

16 MR. MCCRUM: Well, I think having a license to do
17 something as opposed to actually knowing whether or not
18 you do it is two different questions, Todd. But I am
19 willing to revisit both of these issues with our client
20 and ask some of these specific questions that you're
21 raising. But I stand by what we have told you tonight
22 and in our letter that we do not know for certain
23 whether or not our products are practicing various
24 versions of standards. That's information that would
25 need to be obtained from our chip suppliers. And it

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1 seems as though you folks are taking steps to try to get
2 some of these questions answered.

3 MR. KENNEDY: This is Todd. In Sony's original
4 infringement contentions which were served well over a
5 month ago, Sony identified this version 1.3 as being
6 specifically relevant to Vizio's infringement of its
7 patent. And I don't understand how, having that much
8 time to review those infringement contentions, Vizio has
9 made no effort to determine whether its standards
10 actually -- whether its products actually practice that
11 standard and that particular revision of the standard.

12 MR. MCCRUM: Where do you get the idea that we have
13 made no effort to determine that? I just told you we
14 have had extensive conversations with our client about
15 this.

16 MR. KENNEDY: I believe in your letter you said
17 that the information is not in Vizio's possession with
18 regard to whether it practices the standard. Am I wrong
19 about that?

20 MR. MCCRUM: No, you're not; but that's a far cry
21 from saying we have made no effort to determine whether
22 or not we practice any of these standards that you have
23 identified.

24 MR. KENNEDY: Okay. I understand.

25 MR. MCCRUM: But like I said, I'm willing to go

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1 back and ask the specific questions of the client and I
2 can let you know if we find anything outside of that on
3 them.

4 MR. KENNEDY: Can you let us know that by Friday?

5 MR. MCCRUM: I can try, I don't know. There's
6 someone in mind that does a lot of traveling in Asia
7 that I need to talk to specifically; so whether or not
8 he's available this week, I can't say. I will endeavour
9 to do that, but I can't make any firm commitments on
10 this today.

11 MR. KENNEDY: Okay.

12 MR. PEASE: This is Tom. And just to clarify
13 something you said, you said we would have to ask the
14 chip suppliers for certain information. You've said
15 that at various points in this meet and confer and at
16 others. Is it your contention that Vizio does not have
17 access to that information? Because if Vizio has that
18 information and routinely calls up the chip suppliers
19 and tries to get that information, then from our view
20 that's information that's within the Vizio's possession,
21 custody, and control. I know, earlier you mentioned
22 information not being within Vizio's possession, but if
23 it's within its custody and control that's information
24 that ought to be disclosed to Sony. So let us know what
25 your position is on that.

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1 MR. MCCRUM: Well, our position is that if it's not
2 within the confines of Vizio, then it's not technically
3 within our possession, custody, and control. But I will
4 take that further and say, you know, these chip
5 manufacturers guard their information very closely and
6 are not very willing to share details about how their
7 products work.

8 MR. PEASE: Well, I know they give quite a bit of
9 information to the assemblers, the people that build
10 your TVs, the AmTran's of the world, for example. You
11 know, they'll have the software, they'll have the chips,
12 they'll have the reference boards.

13 MR. MCCRUM: You think that's true for AmTran of
14 like media sense chips?

15 MR. PEASE: If it has access to it, then that's the
16 sort of information that ought to be relied upon by
17 Vizio in its responses and it's the sort of information
18 that ought to be turned over to Sony in response to its
19 request.

20 MR. MCCRUM: Well, if you guys are -- well --

21 MR. PEASE: Do you disagree?

22 MR. MCCRUM: What I'll say on that is that we are
23 giving you -- we are working to obtain as much
24 information as we can about our products and we are
25 giving you everything that we have within our

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1 possession, custody, and control.

2 MR. KENNEDY: Okay. Unless anyone has any other
3 issues to raise or any comments, I think that that's all
4 that I have.

5 MR. MILLER: Okay. I don't know if you guys on the
6 line need to be on for this, but we want to just march
7 through a couple of the exhibits that we would like to
8 attach and Steve and I can handle that locally here.
9 I'm happy to let you go or you can stay on.

10 MR. KENNEDY: I'll stay on because I just want to
11 make sure that I got one of those e-mails out to you.

12 MR. MILLER: Okay. Now, as often is the case,
13 Steve, we've got the one copy, but I'll just hand them
14 to you and they're not stamped yet.

15 MR. CORR: I know what they are.

16 MR. MILLER: All right. Well, the first one
17 Exhibit 1, just for the record, is the first set of
18 interrogatories from Sony to Vizio.

19 Exhibit 2 is Vizio's First Supplemental
20 Responses. And attached to this are the various charts,
21 which I'm noticing now did not print correctly. We'll
22 replace those.

23 MR. CORR: Do you want to attach 1-A, as well?

24 MR. MILLER: Yeah, that should be there, but as I'm
25 saying, I notice that they're not printed right here; so

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1 we can swap that out.

2 MR. CORR: Here (indicating).

3 MR. MILLER: Okay. Let's replace that with that.
4 Exhibit 3 is the June 12 letter to Ryan McCrum
5 from Todd Kennedy.

6 Exhibit 4 is the June 4 letter from
7 Todd Kennedy to Steve Corr.

8 Exhibit 5 is the letter to Ryan McCrum from
9 Todd Kennedy dated May 26.

10 Exhibit 6 is the May 6 letter from Ryan McCrum
11 to Todd Kennedy.

12 MR. CORR: And don't we also have the letters we
13 discussed today?

14 MR. MILLER: Yeah, I believe that those are in
15 there, the June 12 letter.

16 MR. CORR: And did you have the June 19 response?

17 MR. MILLER: I do not, but if you would like to
18 mark that, let's mark that as Exhibit 7.

19 MR. CORR: Okay.

20 MR. MILLER: And the June 12 letter that we were
21 discussing is Exhibit 3.

22 MR. CORR: Okay.

23 MR. KENNEDY: I guess if we're going to do all the
24 letters, I mean, the one that started them all was the
25 April 24 letter, I believe that was the date.

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1 MR. CORR: Well, why would we leave out our latest
2 response, Todd, in the sequence of letters? I mean,
3 whatever letters you want to add and if you want to add
4 earlier ones, add them. But I think our June 19
5 response is certainly germane to today's conversation.

6 MR. MCCRUM: This is Ryan. Well, that was
7 specifically discussed, but why are we marking exhibits
8 on a transcript that were not discussed back to April
9 and early May?

10 MR. KENNEDY: You know, I think it's because
11 they're all these interrogatories. And, you know,
12 there's a rule that you're not supposed to -- you know,
13 in any motion to compel, you're not supposed to attach
14 any document, but you are supposed to attach the
15 transcript. And so, you know, the only way to talk
16 about the correspondence that the parties had earlier is
17 to actually attach it to the transcript.

18 MR. MILLER: And we believe that this is a more
19 efficient way to do it than having to call the
20 court reporter and sit down and read everyone's letter
21 to each other. But if that's Vizio position, then that
22 is what we will do going forward if we need to.

23 MR. MCCRUM: Well, if you want to go ahead and mark
24 all the correspondence relating to discovery issues,
25 let's march through it all. I'm not going to have all

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1 the Sony letters marked and not the Vizio ones. So why
2 don't we -- if you want to start back at April 29, then
3 we will move forward and we'll mark -- you know, there
4 are probably 30 or so letters here that we're talking
5 about.

6 MR. KENNEDY: I think we're only interested in ones
7 that discuss either of these Interrogatories 11 and 14,
8 right?

9 MR. CORR: Well, it didn't sound like it because
10 you were not interested in our June 19 letter that was
11 specific to these, so.

12 MR. KENNEDY: No, I am interested in them and I
13 think it should be attached.

14 MR. MCCRUM: All right. Well, what letters do you
15 have in mind that you want included?

16 MR. KENNEDY: The only other one that I have on my
17 list was the very first letter about these
18 interrogatories, and I believe that was April 24.

19 MR. MILLER: All right. So just so we can go
20 through these again, currently marked are the May 6
21 letter, the June 4 letter --

22 MR. MCCRUM: Which May 6 letter? You know,
23 sometimes we have several on a given day.

24 MR. MILLER: Okay. I'll read them, Ryan.

25 May 6 is a Jones Day letter to Todd Kennedy

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.0 (Pages 37 to 40)

1 from Ryan McCrum.
 2 MR. MCCRUM: Okay.
 3 MR. MILLER: The June 4 letter from Todd Kennedy to
 4 Steve Corr.
 5 MR. MCCRUM: Let me get that. Okay.
 6 MR. MILLER: The next one is the May 26 letter from
 7 Todd Kennedy to Ryan McCrum.
 8 MR. MCCRUM: We're go backwards now?
 9 MR. MILLER: Well, we're just going to get them
 10 listed and then we'll figure them out. Okay? Because
 11 they're just numbered accordingly. So May 26 Todd to
 12 Ryan. The next one is the June 12 letter from
 13 Todd Kennedy to Ryan McCrum. Again, we can reorder
 14 these into chronological order at the end. We're just
 15 attempting to get all of the ones that are currently
 16 here out on the table.
 17 MR. MCCRUM: When was that?
 18 MR. CORR: June 12, the one that we discussed
 19 today.
 20 MR. MCCRUM: Okay. That one is fine.
 21 MR. MILLER: The next one is the June 19 letter
 22 from Ryan McCrum to Todd Kennedy.
 23 MR. MCCRUM: Okay.
 24 MR. MILLER: So that leaves my table at least --
 25 and correct me if I'm missing any or added any in

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1 waste everyone's time sitting here going through the
 2 entirety of it tonight. But if we're going to be going
 3 through and selecting letters that were not specifically
 4 discussed during the meet and confer tonight, I want to
 5 reserve the right to add additional letters to the
 6 exhibits as needed.
 7 MR. KENNEDY: We're fine with that. You know, as
 8 long as the letter discusses in some way the two
 9 interrogatories that we discussed, I think it should be
 10 attached.
 11 Rory, I just sent you -- it was actually an
 12 April 29 letter that --
 13 MR. MILLER: Todd, if you want to e-mail it to our
 14 word processing coordinator here in Los Angeles, I can
 15 ask them to print it and we can add it to the stack
 16 here.
 17 MR. KENNEDY: So do you want me to send it to them?
 18 MR. MCCRUM: That would probably get to them faster
 19 than me forwarding it on.
 20 MR. CORR: What is that letter, Todd?
 21 MR. KENNEDY: That is from me to Ryan or it might
 22 have been to Wamsley, I can't remember.
 23 MR. MCCRUM: Jim Wamsley.
 24 MR. KENNEDY: Okay.
 25 MR. MCCRUM: And then we need to mark my May 28,

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1 here -- having the May 6 letter, a May 26 letter, a
 2 June 4 letter, a June 12 letter, and a June 19 letter.
 3 MR. MCCRUM: Okay. And why are we -- why is the
 4 May 26 letter from Todd Kennedy to me in here?
 5 MR. MILLER: The May 26 letter from Todd Kennedy to
 6 you is in here because on Page 1 it discusses Sony's
 7 Interrogatory Number 11. And it says:
 8 "Sony's Interrogatory No. 11
 9 requires Vizio to identify for each
 10 Vizio product which of the 11 enumerated
 11 features it incorporates. Vizio
 12 provided no substantive information in
 13 response to that interrogatory.
 14 Instead, Vizio invoked Rule 33(d)
 15 without identifying a single Vizio
 16 production document that allegedly
 17 contains the information sought by this
 18 Interrogatory."
 19 MR. MCCRUM: I have three letters from May 26. I
 20 was looking at the wrong one. Do we have my letter
 21 from -- let's see. Okay.
 22 MR. CORR: Any others to add, Ryan?
 23 MR. MCCRUM: Well, not off the top of my head, but
 24 I'm going to reserve the right to do so since the
 25 correspondence on this is so lengthy and I don't want to

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1 2009 letter to Todd Kennedy.
 2 MR. CORR: Okay. To clarify this, can we exchange
 3 what the exhibits are going to be on this tomorrow. And
 4 then, Todd, I can send to you what I think we need to
 5 add and then you can put in whatever you think you need
 6 to add, but I think we are just kind of guessing right
 7 now.
 8 MR. MILLER: Yeah, I think that the housekeeping
 9 can be done after this and submit it by agreement. I
 10 don't think that we need to do it right now and possibly
 11 end up in a situation where we want to go back. Let's
 12 say by close of business tomorrow, we'll discuss and get
 13 the exhibits put together?
 14 MR. KENNEDY: Yeah, and sorry, I didn't mean to
 15 blind side you guys with this, I should have sent around
 16 the letters earlier so you could have had a chance to
 17 look at it and add anything that you wanted. So I'll
 18 try to do a better job next time.
 19 MR. CORR: Ryan, I don't know if -- I mean, can we
 20 get to this by the end of tomorrow or do we need until
 21 Wednesday?
 22 MR. MCCRUM: Why don't we take until Wednesday to
 23 be sure.
 24 MR. CORR: It's just I hadn't planned for this.
 25 That's my issue.

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11 (Pages 41 to 44)

1 MR. MILLER: Wednesday should be fine. If that
2 works for everyone else, that should be fine on our end.

3 MR. MCCRUM: Fine. All right, guys. Thank you
4 all.

5 MR. MILLER: Okay. Thanks everyone.

6 (The meet and confer concluded at
7 7:07 p.m.)

8 (The exhibits were subsequently
9 sent electronically to the court
10 reporter and are attached hereto.)

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Page 45

1 DEPOSITION OFFICER'S CERTIFICATE

2 [C.C.P. 2025(q)(1),(r)]
3

4 STATE OF CALIFORNIA)

5) ss

6 COUNTY OF LOS ANGELES)
7

8 I, JULIE SEYMOUR, Certified Shorthand
9 Reporter, Certificate No. 12341, State of California,
10 hereby certify:

11 I am the deposition officer that
12 stenographically recorded the foregoing meeting;

13 The foregoing transcript is a true record of
14 the statements given;

15 Dated: _____, Los Angeles, California.
16

17 JULIE SEYMOUR, CSR NO. 12341
18
19
20
21
22
23
24
25

Page 46

12 (Pages 45 to 46)

DEPOSITION OFFICER'S CERTIFICATE

[C.C.P. 2025(q) (1) , (r)]

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, JULIE SEYMOUR, Certified Shorthand
Reporter, Certificate No. 12341, State of California,
hereby certify:

I am the deposition officer that
stenographically recorded the foregoing meeting;

The foregoing transcript is a true record of
the statements given;

Dated: 6-26-09, Los Angeles, California.

Julie Seymour
JULIE SEYMOUR, CSR NO. 12341

EXHIBIT 7

High-bandwidth Digital Content Protection System

Revision 1.3

21 December, 2006

Digital Content Protection LLC

SONY0005632

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Acknowledgement

Silicon Image Inc. has contributed to the development of this specification.

Intellectual Property

Implementation of this specification requires a license from the Digital Content Protection LLC.

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- 17 February 00 – 1.00 Revision. Publication at Intel Developer Forum
- 9 June 03 – 1.1 Revision. Publication on DCP LLC web site
- 13 June 06 – 1.2 Revision. Publication on DCP LLC web site
- 21 December 06 – 1.3 Revision. Publication on DCP LLC web site

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1 Introduction

1.1 Scope

This specification describes the High-bandwidth Digital Content Protection (HDCP) system, Revision 1.30, referred to as HDCP 1.3. HDCP 1.3 is a revision update to HDCP, Revision 1.20 and its errata, referred to collectively as HDCP 1.2.

HDCP 1.3 is designed for protecting Audiovisual content over certain high-bandwidth interfaces, referred to as HDCP-protected Interfaces, from being copied. In HDCP 1.3, the HDCP-protected Interfaces are Digital Visual Interface (DVI), High Definition Multimedia Interface (HDMI), Unified Display Interface (UDI), Giga-bit Video Interface (GVIF) and DisplayPort. This document explains in detail HDCP 1.3 applied to HDMI and DVI. Please refer to HDCP on DisplayPort Specification Rev 1_0 for the HDCP Amendment for DisplayPort. Use of HDCP 1.3 and the HDCP Amendment for DisplayPort are licensed under the terms of the HDCP Adopter Agreement available through DCP, LLC. No other use, right or license to HDCP 1.3 Specification or the HDCP Amendment for DisplayPort is granted by implication, estoppel or otherwise, under any patents, trade secrets or other intellectual property rights now or hereafter owned or controlled by DCP, LLC or its Adopters. In an HDCP System, two or more HDCP Devices are interconnected through an HDCP-protected Interface. The Audiovisual Content protected by HDCP, referred to as HDCP Content, flows from the Upstream Content Control Function into the HDCP System at the most upstream HDCP Transmitter. From there, the HDCP Content, encrypted by the HDCP System, flows through a tree-shaped topology of HDCP Receivers over HDCP-protected Interfaces. This specification describes a content protection mechanism for: (1) authentication of HDCP Receivers to their immediate upstream connection (to an HDCP Transmitter), (2) revocation of HDCP Receivers that are determined by the Digital Content Protection, LLC, to be invalid, and (3) HDCP Encryption of Audiovisual Content over the HDCP-protected Interfaces between HDCP Transmitters and their downstream HDCP Receivers. HDCP Receivers may render the HDCP Content in audio and visual form for human consumption. HDCP Receivers may be HDCP Repeaters that serve as downstream HDCP Transmitters emitting the HDCP Content further downstream to one or more additional HDCP Receivers.

Except when specified otherwise, HDCP 1.3-compliant HDMI Devices must interoperate with other HDCP 1.3, HDCP 1.2 and HDCP 1.1-compliant HDMI Devices attached to their HDCP-protected Interface Ports using the same protocol. Additionally, HDCP 1.3-compliant Devices of which one or more of their HDCP-protected Interface Ports are using the DVI protocol must interoperate with HDCP 1.3, HDCP 1.2, HDCP 1.1 and HDCP 1.0-compliant Devices attached to such HDCP-protected Interface Ports using the DVI protocol. HDCP Transmitters must support HDCP Repeaters.

The state machines in this specification define the required behavior of HDCP Devices. The link-visible behavior of HDCP Devices implementing the specified state machines must be identical, even if implementations differ from the descriptions. The behavior of HDCP Devices implementing the specified state machines must also be identical from the perspective of an entity outside of the HDCP System.

Implementations must include all elements of the content protection system described herein, unless the element is specifically identified as informative or optional. Adopters must also ensure that implementations satisfy the robustness and compliance rules described in the technology license. Additionally, HDCP Transmitters may be subject to additional robustness and compliance rules associated with other content protection technologies.

1.2 Definitions

The following terminology, as used throughout this specification, is defined as herein:

Audiovisual Content. Audiovisual works (as defined in the United States Copyright Act as in effect on January 1, 1978), text and graphic images, are referred to as *AudioVisual Content*.

Authorized Device. An HDCP Device that is permitted access to HDCP Content is referred to as an *Authorized Device*. An HDCP Transmitter may test if an attached HDCP Receiver is an Authorized Device by successfully completing the first and, when applicable, second part of the authentication protocol. If the authentication protocol successfully results in establishing authentication, then the other device is considered by the HDCP Transmitter to be an Authorized Device.

Device Key Set. Each HDCP Device has a *Device Key Set*, which consists of a set of Device Private Keys along with the associated Key Selection Vector.

Device Private Keys. A set of Device Private Keys consists of 40 different 56-bit values. These keys are to be protected from exposure outside of the HDCP Device. A set of Device Private Keys is associated with a unique Key Selection Vector.

downstream. The term, *downstream*, is used as an adjective to refer to being towards the sink of the HDCP Content stream. For example, when an HDCP Transmitter and an HDCP Receiver are connected over an HDCP-protected Interface, the HDCP Receiver can be referred to as the *downstream* HDCP Device in this connection. For another example, on an HDCP Repeater, the HDCP-protected Interface Port(s) which can emit HDCP Content can be referred to as its *downstream* HDCP-protected Interface Port(s). See also, *upstream*.

Enhanced Encryption Status Signaling (EESS). *EESS*, further described in Section 2.7, is a protocol for signaling whether encryption is enabled or disabled for a frame. *EESS* is always used with the HDMI protocol, but is an optional feature with the DVI protocol. See also, *Original Encryption Status Signaling (OESS)*.

frame. For purposes of the HDCP specification, a frame consists of the pixel data between vertical synchronization signals. HDCP may be used with both progressive and interlaced video formats. For interlaced video, every field is an HDCP frame.

HDCP. *HDCP* is an acronym for High-bandwidth Digital Content Protection. This term refers to this content protection system as described by any revision of this specification and its errata.

HDCP 1.0. *HDCP 1.0* refers to, specifically, the variant of HDCP described by Revision 1.00 of this specification along with its associated errata.

HDCP 1.1. *HDCP 1.1* refers to, specifically, the variant of HDCP described by Revision 1.10 of this specification along with its associated errata, if applicable.

HDCP 1.2. *HDCP 1.2* refers to, specifically, the variant of HDCP described by Revision 1.20 of this specification along with its associated errata, if applicable.

HDCP 1.3. *HDCP 1.3* refers to, specifically, the variant of HDCP described by Revision 1.30 of this specification along with its associated errata, if applicable.

HDCP 1.0-compliant Device. An HDCP Device that is designed in adherence to HDCP 1.0 is referred to as an *HDCP 1.0-compliant Device*.

HDCP 1.1-compliant Device. An HDCP Device that is designed in adherence to HDCP 1.1 is referred to as an *HDCP 1.1-compliant Device*.

HDCP 1.2-compliant Device. An HDCP Device that is designed in adherence to HDCP 1.2 is referred to as an *HDCP 1.2-compliant Device*.

HDCP 1.3-compliant Device. An HDCP Device that is designed in adherence to HDCP 1.3 is referred to as an *HDCP 1.3-compliant Device*.

HDCP Content. *HDCP Content* consists of Audiovisual Content that is protected by the HDCP System. *HDCP Content* includes the Audiovisual Content in encrypted form as it is transferred from an HDCP Transmitter to an HDCP Receiver over an HDCP-protected Interface, as well as any translations of the same content, or portions thereof. For avoidance of doubt, Audiovisual Content that is never encrypted by the HDCP System is not *HDCP Content*.

HDCP Device. Any device that contains one or more HDCP-protected Interface Ports and is designed in adherence to HDCP is referred to as an *HDCP Device*.

HDCP Encryption. *HDCP Encryption* is the encryption technology of HDCP when applied to the protection of HDCP Content in an HDCP System.

HDCP-protected Interface. An interface for which HDCP applies is described as an *HDCP-protected Interface*. For HDCP 1.0, the only *HDCP-protected Interface* is the Digital Visual Interface (DVI). For HDCP 1.1 and HDCP 1.2, in addition to DVI, the High Definition Multimedia Interface (HDMI) is also an *HDCP-protected Interface*. For HDCP 1.3, DVI, HDMI, Unified Display Interface (UDI), Giga-bit Video Interface (GVIF) and DisplayPort are all *HDCP-protected Interfaces*. See the References section for further information regarding these *HDCP-protected Interfaces*.

HDCP-protected Interface Port. A connection point on an HDCP Device that supports an HDCP-protected Interface is referred to as an *HDCP-protected Interface Port*.

HDCP Receiver. An HDCP Device that can receive and decrypt HDCP Content through one or more of its HDCP-protected Interface Ports is referred to as an *HDCP Receiver*.

HDCP Repeater. An HDCP Device that can receive and decrypt HDCP Content through one or more of its HDCP-protected Interface Ports, and can also re-encrypt and emit said HDCP Content through one or more of its HDCP-protected Interface Ports, is referred to as an *HDCP Repeater*. An *HDCP Repeater* may also be referred to as either an HDCP Receiver or an HDCP Transmitter when referring to either the upstream side or the downstream side, respectively.

HDCP System. An *HDCP System* consists of an HDCP Transmitter and one or more HDCP Receivers connected through their HDCP-protected interfaces in a tree topology; whereas the said HDCP Transmitter is the HDCP Device most upstream, and receives the HDCP Content from an Upstream Content Control Function. All HDCP Devices connected to other HDCP Devices in an *HDCP System* over HDCP-protected Interfaces are part of the *HDCP System*.

HDCP Transmitter. An HDCP Device that can encrypt and emit HDCP Content through one or more of its HDCP-protected Interface Ports is referred to as an *HDCP Transmitter*.

I²C Bus. A bus linking the HDCP Transmitter and HDCP Receiver compliant with the Video Electronics Standards Association (VESA) Digital Display Channel (DDC) specification subset DDC2B, as required by the Digital Display Working Group (DDWG) Digital Video Interface (DVI) specification.

Key Selection Vector (KSV). Each HDCP Device contains a set of Device Private Keys. A set of Device Private Keys is associated with a *Key Selection Vector (KSV)*. Each HDCP Transmitter has assigned to it a unique *KSV* from all other HDCP Transmitters. Also, each HDCP Receiver has assigned to it a unique *KSV* from all other HDCP Receivers.

Original Encryption Status Signaling (OESS). *OESS*, further described in Section 2.7, is a protocol for signaling whether encryption is enabled or disabled for a frame. *OESS* is only used with the DVI protocol. See also, *Enhanced Encryption Status Signaling (EESS)*.

upstream. The term, *upstream*, is used as an adjective to refer to being towards the source of the HDCP Content stream. For example, when an HDCP Transmitter and an HDCP Receiver are connected over an HDCP-protected Interface, the HDCP Transmitter can be referred to as the *upstream* HDCP Device in this connection. For another example, on an HDCP Repeater, the HDCP-protected Interface Port(s) which can receive HDCP Content can be referred to as its *upstream* HDCP-protected Interface Port(s). See also, *downstream*. This term should not be confused as referring to the Upstream Specification.

Upstream Content Control Function. The HDCP Transmitter most upstream in the HDCP System receives HDCP Content from the *Upstream Content Control Function*. The *Upstream Content Control Function* is not part of the HDCP System, and the methods used, if any, by the *Upstream Content Control Function* to determine for itself the HDCP System is correctly authenticated or permitted to receive the Audiovisual Content, or to transfer the Audiovisual Content to the HDCP System, are beyond the scope of this specification. On a personal computer platform, an example of an *Upstream Content Control Function* may be software designed to emit Audiovisual Content to a display or other presentation device that requires HDCP.

In addition, terms such as *Data Island*, *Data Island Period*, *Guard Band*, *Leading Guard Band*, *Trailing Guard Band*, *Video Data*, *Video Data Period*, and *AVMUTE*, are further explained in the HDMI Specification (see references).

1.3 Overview

HDCP is designed to protect the transmission of Audiovisual Content between an HDCP Transmitter and an HDCP Receiver. The system also allows for HDCP Repeaters that support downstream HDCP-protected Interface Ports. Figure 1-1 illustrates an example connection topology for HDCP Devices. The HDCP System allows up to seven levels of HDCP Repeaters and as many as 128 total HDCP Devices, including HDCP Repeaters, to be attached to an HDCP-protected Interface Port.

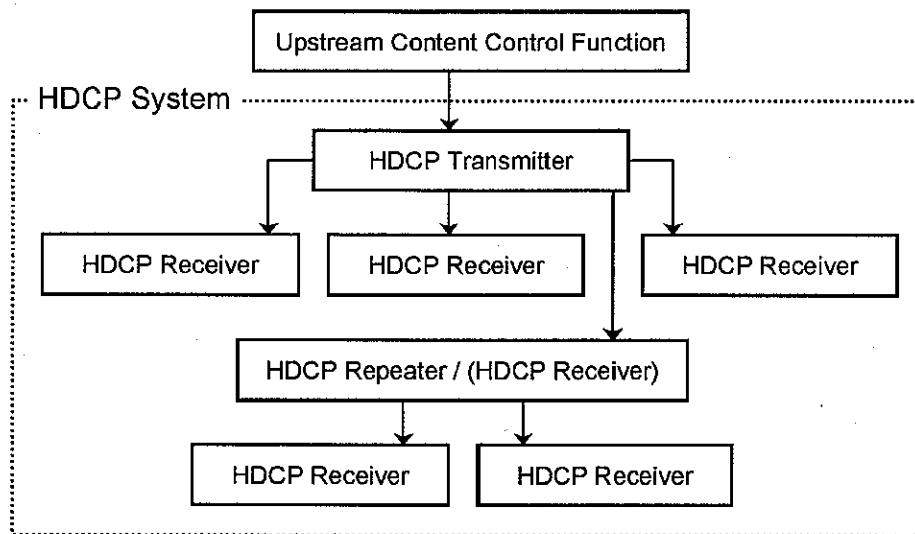


Figure 1-1. Sample Connection Topology of an HDCP System

There are three elements of the content protection system. Each element plays a specific role in the system. First, there is the authentication protocol, through which the HDCP Transmitter verifies that a given HDCP Receiver is licensed to receive HDCP Content. With the legitimacy of the HDCP Receiver determined, encrypted HDCP Content is transmitted between the two devices based on shared secrets established during the authentication protocol. This prevents eavesdropping devices from utilizing the content. Finally, in the event that legitimate devices are compromised to permit unauthorized use of HDCP Content, renewability allows a HDCP Transmitter to identify such compromised devices and prevent the transmission of HDCP Content.

This document contains chapters describing in detail the requirements of each of these elements. In addition, a chapter is devoted describing the cipher that is used in both the authentication protocol and in the encryption of the HDCP Content. All aspects of HDCP map easily onto the existing DVI and HDMI specifications.

1.4 Terminology

Throughout this specification, names that appear in *italic* refer to values that are exchanged during the HDCP cryptographic protocol. Names that appear in CAPS refer to status values from the video receiver. C-style notation is used throughout the state diagrams and protocol diagrams, although the logic functions AND, OR, and XOR are written out where a textual description would be more clear.

The concatenation operator '||' combines two values into one. For eight-bit values *a* and *b*, the result of (*a* || *b*) is a 16-bit value, with the value *a* in the most significant eight bits and *b* in the least significant eight bits.

1.5 References

Digital Display Working Group (DDWG), *Digital Visual Interface (DVI) Revision 1.0*, April 2, 1999.

Video Electronics Standards Association (VESA), *Enhanced Display Data Channel (DDC) Standard*, September 2, 1999.

HDMI, LLC., *High-Definition Multimedia Interfaces (HDMI) Revision 1.0*, December XX, 2002.

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2 Authentication

The HDCP Authentication protocol is an exchange between an HDCP Transmitter and an HDCP Receiver that affirms to the HDCP Transmitter that the HDCP Receiver is authorized to receive HDCP Content. This affirmation is in the form of the HDCP Receiver demonstrating knowledge of a set of secret device keys. Each HDCP Device is provided with a unique set of secret device keys, referred to as the Device Private Keys, from the Digital Content Protection LLC. The communication exchange, which allows for the receiver to demonstrate knowledge of such secret device keys, also provides for both HDCP Devices to generate a shared secret value that cannot be determined by eavesdroppers on this exchange. By having this shared secret formation melded into the demonstration of authorization, the shared secret can then be used as a symmetric key to encrypt HDCP Content intended only for the Authorized Device. Thus, a communication path is established between the HDCP Transmitter and HDCP Receiver that only Authorized Devices can access.

2.1 Overview

Each HDCP Device contains an array of 40, 56-bit secret device keys which make up its Device Private Keys, and a corresponding identifier, received from the Digital Content Protection LLC. This identifier is the Key Selection Vector (KSV) assigned to the device. The KSV is a 40-bit binary value.

The HDCP Authentication Protocol can be considered in three parts. The first part establishes shared values between the two HDCP Devices if both devices have a valid Device Key Set from the Digital Content Protection LLC. The second part allows an HDCP Repeater to report the KSVs of attached HDCP Receivers. The third part occurs during the vertical blanking interval preceding each frame for which encryption is enabled, and provides an initialization state for the HDCP Cipher for encrypting the HDCP Content within that frame.

2.2 Protocol

2.2.1 First Part of Authentication Protocol

Figure 2-1 illustrates the first part of the authentication exchange. The HDCP Transmitter (*Device A*) can initiate authentication at any time, even before a previous authentication exchange has completed. Authentication is initiated by the HDCP Transmitter by sending an initiation message containing its KSV (A_{ksv}) and a 64-bit pseudo-random value (A_r) generated by the HDCP Cipher function `hdcpRngCipher` (Section 4.5) to the HDCP Receiver (*Device B*). The HDCP Receiver responds by sending a response message containing the receiver's KSV (B_{ksv}) and the REPEATER bit, which indicates if the receiver is an HDCP Repeater. The HDCP Transmitter verifies that the HDCP Receiver's KSV has not been revoked (section 5), and that the received KSV contains 20 ones and 20 zeros.

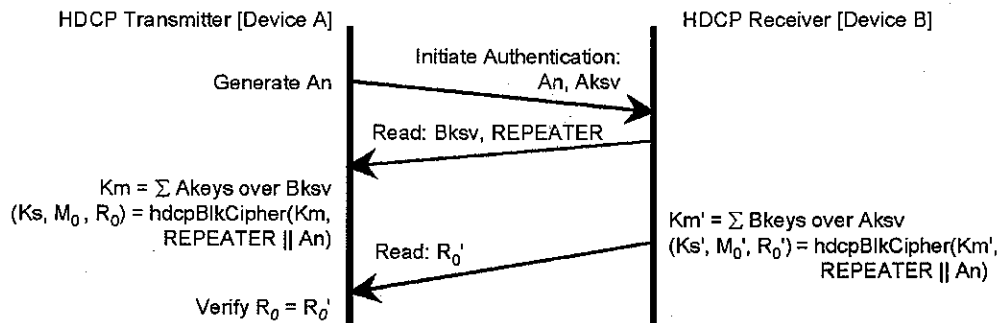


Figure 2-1. First Part of Authentication Protocol

At this point, if both HDCP Devices have a valid array of secret device keys and corresponding KSV from the Digital Content Protection LLC, then they can each calculate a 56-bit shared secret value, K_m (or $K_{m'}$ in the video receiver). Each device calculates K_m (or $K_{m'}$) by adding a selection of its private device keys described by the other device's KSV, using 56-bit binary addition (i.e. unsigned addition modulo 2^{56}). The selection of secret device keys that are added together consists of those corresponding to the bit indexes of all of the 1-bits of the binary representation of the KSV.

For example, suppose B_{ksv} equals 0x5A3. For the binary representation of 0x5A3, bit positions 0, 1, 5, 7, 8, and 10 are ones and all other bit positions are zeros. Therefore, *Device A* will add its own secret device keys at array indexes 0, 1, 5, 7, 8, and 10 together to calculate the shared secret value, K_m . *Device B* will perform an analogous calculation using its own private key array and *Device A*'s KSV to get $K_{m'}$.

If either device has an invalid set of secret device keys or corresponding KSV, then K_m will not be equal to $K_{m'}$.

The HDCP Cipher function `hdcpBlockCipher` (Section 4.5) is then used to calculate three values, K_s , M_0 , and R_0 . The cipher initialization values for this calculation are K_m (or $K_{m'}$), and the 65-bit concatenation of REPEATER with A_n . The HDCP Receiver's status bit REPEATER indicates that the HDCP Receiver supports retransmission of HDCP Content to additional HDCP Receivers. The session key K_s is a 56-bit secret key for the HDCP Cipher. M_0 is a 64-bit secret value used in the second part of the authentication protocol, and as a supplemental HDCP Cipher initialization value. R_0' is a 16-bit response value that the video receiver returns to the HDCP Transmitter to provide an indication as to the success of the authentication exchange. R_0' must be available for the HDCP Transmitter to read within 100 milliseconds from the time that the HDCP Transmitter finishes writing A_{ksv} to the video receiver. The HDCP Transmitter must not read the R_0' value sooner than 100ms after writing A_{ksv} .

If authentication was successful, then R_0' will be equal to R_0 . If authentication was unsuccessful, then R_0' and R_0 will, in most cases, differ. Future R_i' values, produced during the third part of the authentication protocol, will reveal that authentication has failed in the event that the R_0 values erroneously indicate that authentication was successful.

The HDCP Transmitter enables HDCP Encryption when the first part of the authentication protocol successfully completes.

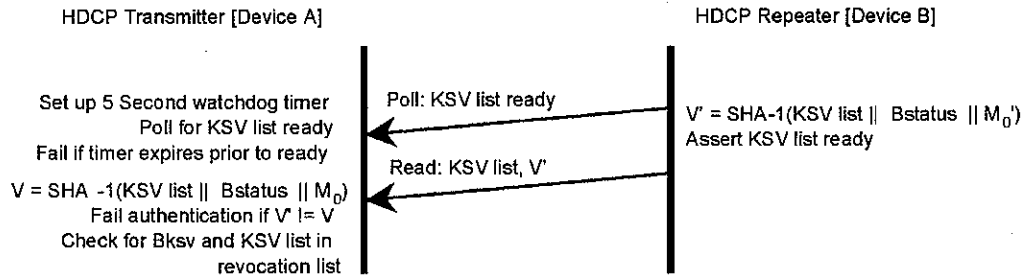


Figure 2-2. Second Part of Authentication Protocol

2.2.2 Second Part of Authentication Protocol

The second part of the authentication protocol (Figure 2-2) is required if the HDCP Receiver is an HDCP Repeater. The HDCP Transmitter executes the second part of the protocol only when the REPEATER bit is set, indicating that the attached HDCP Receiver is an HDCP Repeater. This part of the protocol assembles a list of all downstream KSVs attached to the HDCP Repeater through a permitted connection tree, enabling revocation support upstream.

HDCP Repeaters assemble the list of all attached downstream HDCP Receivers as the downstream HDCP-protected Interface Ports of the HDCP Repeater complete the authentication protocol with attached HDCP Receivers. The list is represented by a contiguous set of bytes, with each KSV occupying five bytes stored in little-endian order. The total length of the KSV list is five bytes times the total number of attached and active downstream HDCP Devices, including downstream HDCP Repeaters. An HDCP-protected Interface Port with no active device attached adds nothing to the list. Also, the KSV of the HDCP Repeater itself at any level is not included in its own KSV list. An HDCP-protected Interface Port connected to an HDCP Receiver that is not an HDCP Repeater adds the *Bksv* of the attached HDCP Receiver to the list. HDCP-protected Interface Ports that have an HDCP Repeater attached add the KSV list read from the attached downstream HDCP Repeater, plus the *Bksv* of the attached downstream HDCP Repeater itself. In order to add the KSV list of the attached HDCP Repeater, it is necessary for the HDCP Repeater to verify the integrity of the list by computing V and checking this value against V' received from the attached HDCP Repeater. If V does not equal V' , the downstream KSV list integrity check fails, and the upstream HDCP Repeater must not assert its READY status. Upstream HDCP Transmitters will detect this failure by the expiration of a watchdog timer set in the HDCP Transmitter.

When the HDCP Repeater has assembled the complete list of attached HDCP Devices' KSVs, it computes and appends to the list the verification value V . This value is the SHA-1 hash of the concatenation of the KSV list, *Bstatus*, and the secret value M_0 . When constructing the byte stream for SHA-1 input, the KSV list is in the same little-endian byte order in which it is transmitted over the link, *Bstatus* is appended in little-endian order, and M_0 is also appended in little-endian order. (See tables A-24 and A-25). When both the KSV list and V are available, the HDCP Repeater asserts its READY status indicator.

The HDCP Transmitter, having determined that the REPEATER bit read earlier in the protocol is set, sets a five-second watchdog timer and polls the HDCP Repeater's READY status bit. When READY is set, the HDCP Transmitter reads the KSV list and V from the HDCP Repeater. If the size of the KSV list exceeds the capacity of the HDCP transmitter, the authentication protocol is aborted. The HDCP Transmitter verifies the integrity of the KSV list by computing the SHA-1 hash value V and comparing this value to V' . If V is not equal to V' , then the authentication protocol is aborted.

If the asserted READY status is not received within a maximum-permitted time of five seconds, authentication of the HDCP Repeater fails. With this failure, the HDCP Transmitter abandons the authentication protocol with the HDCP Repeater. Authentication can be reattempted with the transmission of a new value *Ak*₁ and the *Ak*_{sv}.

In addition to assembling the KSV list, an HDCP Repeater propagates topology information upward through the connection tree to the HDCP Transmitter. An HDCP Repeater reports the topology status variables DEVICE_COUNT and DEPTH. The DEVICE_COUNT for an HDCP Repeater is equal to the total number of attached downstream HDCP Receivers and HDCP Repeaters. The value is calculated as the sum of the number of attached downstream HDCP Receivers and HDCP Repeaters plus the sum of the DEVICE_COUNT read from all attached HDCP Repeaters. The DEPTH status for an HDCP Repeater is equal to the maximum number of connection levels below any of the downstream HDCP-protected Interface Ports. The value is calculated as the maximum DEPTH reported from downstream HDCP Repeaters plus one (accounting for the attached downstream HDCP Repeater). For example, an HDCP Repeater with zero downstream HDCP Devices reports a value of zero for both the DEPTH and the DEVICE_COUNT. An HDCP Repeater with four downstream HDCP Receivers that are not HDCP Repeaters reports a DEPTH of one and a DEVICE_COUNT of four. If the computed DEVICE_COUNT for an HDCP Repeater exceeds 127 or the maximum number of devices supported by the size of the KSV FIFO, the HDCP Repeater must assert the MAX_DEVS_EXCEEDED status bit. If the computed DEPTH for an HDCP Repeater exceeds seven, the HDCP Repeater must assert the MAX_CASCADE_EXCEEDED status bit. When an HDCP Repeater receives a MAX_DEVS_EXCEEDED or a MAX_CASCADE_EXCEEDED status from a downstream HDCP Repeater, it is required to assert the corresponding status bits to the upstream HDCP Transmitter. If either MAX_CASCADE_EXCEEDED or MAX_DEVS_EXCEEDED status bits are set, the READY bit may be set by the repeater, or it may not set the READY bit and simply let the timeout occur in the HDCP transmitter.

For dual link repeaters, the repeater combines the topology information for both links into a single KSV list that is read from the primary link KSV FIFO. It may at its discretion remove duplicate KSV information in the list. Duplicate KSV values may result from downstream dual link HDCP devices having the same KSV on both links.

Authentication fails if the topology maximums are exceeded. The top-level HDCP Transmitter checks to see if the KSV of any attached device is found in the current revocation list, and, if present, the authentication fails. The HDCP Transmitter verifies the integrity of the current revocation list by checking the signature of the system renewability message (SRM) using the Digital Content Protection LLC public key. Failure of this integrity check constitutes an authentication failure.

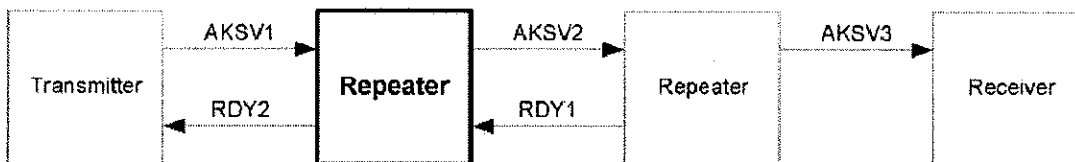


Figure 2-3. Multi-level Repeater Protocol Signals.

From	To	Max Delay	Conditions and Comments
AKSV1 Upstream HDCP Transmitter <i>Ak</i> _{sv} received	AKSV2 HDCP Repeater's <i>Ak</i> _{sv} transmitted downstream	100 ms	Downstream propagation time. To latest <i>Ak</i> _{sv} transmission when more than one HDCP Receiver is attached.

AKSV3 <i>Aksv</i> transmitted to all downstream HDCP-protected Interface Ports	RDY1 Upstream READY asserted	500 ms	Upstream propagation time when no downstream HDCP Repeaters are attached. (no downstream KSV lists to process)
RDY1 Downstream READY asserted	RDY2 Upstream READY asserted	500 ms	Upstream propagation time when one or more HDCP Repeaters are attached. From latest downstream READY. (downstream KSV lists must be processed)
AKSV1 Upstream HDCP Transmitter transmits <i>Aksv</i>	RDY2 Upstream HDCP Transmitter polls asserted READY	4.2 seconds	For the Maximum of seven repeater levels, 7 * (100 ms + 500 ms)

Table 2-1. HDCP Repeater Protocol Timing Requirements

Table 2-1 specifies HDCP Repeater timing requirements that bound the worst-case propagation time for the KSV list. Note that because each HDCP Repeater does not know the number of downstream HDCP Repeaters, it must use the same five-second timeout used by the upstream HDCP Transmitter when polling for downstream READY.

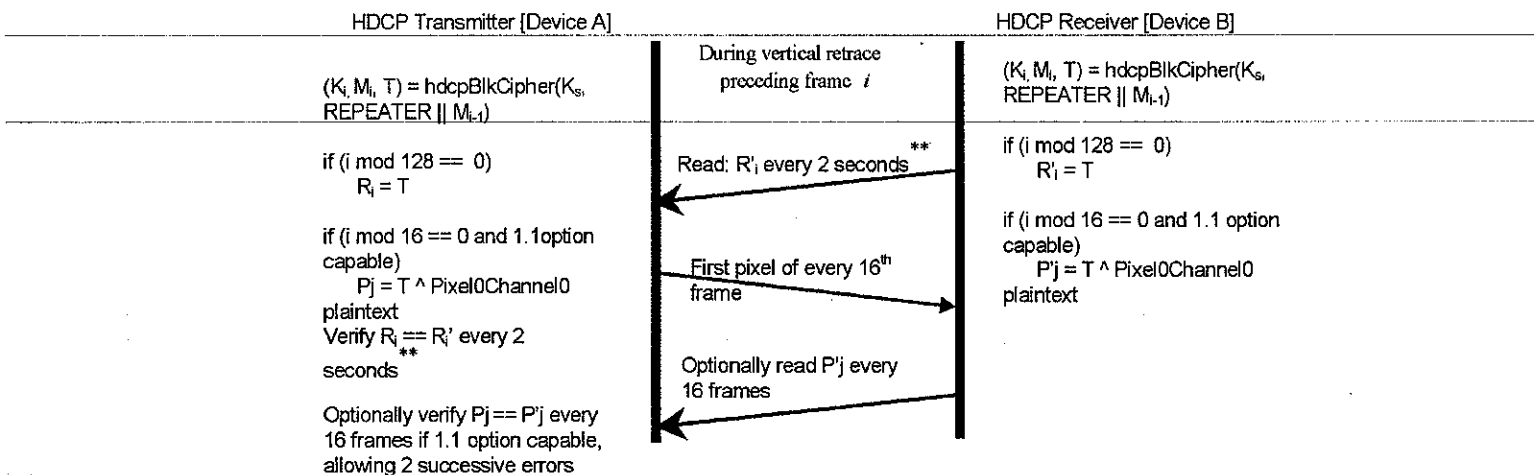


Figure 2-4. Third Part of Authentication Protocol **

2.2.3 Third Part of Authentication Protocol

The third part of the authentication protocol, illustrated in Fig. 2-4, occurs during the vertical blanking interval preceding the frame for which it applies. Each of the two HDCP Devices calculates new cipher initialization values, K_i and M_i , and a third value R_i . The index, *i*, represents the frame number, starting with the value of one for the first video frame for which encryption is enabled after the completion of the first part of the authentication protocol, and incrementing either on encrypted frames or on every frame,

** Reading R_i synchronously every 128th frame is also acceptable in lieu of asynchronous polling every 2 seconds

depending upon whether ADVANCE_CIPHER mode is enabled (see below). However, the frame counter does not advance while the HDCP device is in the HDMI AVMUTE state, and does not resume advancing after HDMI AVMUTE state until the first encrypted frame. K_i is a 56-bit key used to initialize the HDCP cipher for encryption or decryption of the HDCP Content. M_i is a new 64-bit initialization value for the HDCP cipher. R_i is a 16-bit value used for link integrity verification, and is updated for every 128th frame counter increment, starting with the 128th. The HDCP Transmitter verifies R_i against its own calculations to insure that the video receiver is still able to correctly decrypt the information. This verification is made at a minimum rate of once every two seconds. Synchronous reading of R_i every time it changes (every 128th frame) is also acceptable in lieu of asynchronous polling. (Synchronous reading in the frame prior to R_i update and shortly after 1 millisecond of the R_i update also provides a method of detecting frame counter mismatch between HDCP transmitter and HDCP receiver when either device does not support Enhanced Link Verification). It is required that the R_i read operation complete within 1 milliseconds from the time that it is initiated by the HDCP Transmitter. Failure for any reason causes the HDCP Transmitter to consider the HDCP Receiver to be unauthenticated.

In order to enhance the detection of the loss of encryption synchronization, the HDCP Transmitter and Receiver may optionally support Enhanced Link Verification, in which a computation to aid verification of cipher synchronization is performed when a specific video pixel is processed. For every 16th frame counter increment, the decrypted value of channel zero of the first pixel is combined with the least significant byte R_j using the XOR operation, and the result is made available on the P_j port. If this feature is supported by an HDCP Receiver, the Bcaps bit 1.1_FEATURES is set and the P_j port is always updated. The HDCP Transmitter may optionally support reading and verifying the P_j value against an internally generated P_j value. However, unless a minimum of three successive mismatches of stable values occur, this is considered to be a pixel transmission error and not an authentication or synchronization error. In addition, the mismatched P_j values must be sampled more than once in the same manner as the R_i value. (see Appendix C). Note that the frame counter may advance on unencrypted frames if ADVANCE_CIPHER mode (see below) is enabled, in which case the least significant byte R_j and the pixel data is captured every 16th frame. However, if ADVANCE_CIPHER is not enabled, these values are updated on every 16th encrypted frame.

ADVANCE_CIPHER mode is an optional mode in which the cipher state and frame counter is advanced for every frame in DVI mode, or for every frame when not in AVMUTE state for HDMI mode, regardless of whether encryption is enabled or disabled. The HDCP Receiver indicates this capability by setting the 1.1_FEATURES Bcaps bit, and the HDCP Transmitters enables it by setting the ENABLE_1.1_FEATURES bit in the AInfo byte. The frame counter is first updated to a value of 1 when the first ENC_EN is sent or received after authentication, and thereafter incremented every frame, until SET_AVMUTE is set (in HDMI mode). The cipher state is not advanced if HDMI mode AV_MUTE is active, and resumes advancing with the first ENC_EN frame after HDMI CLEAR_AVMUTE.

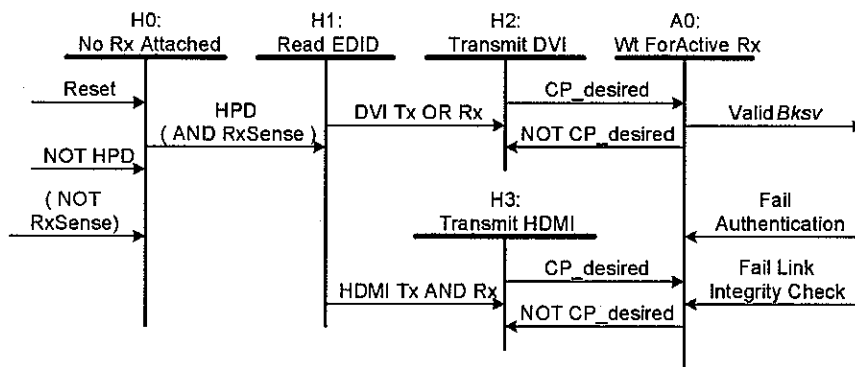
Note: An HDMI-capable HDCP Transmitter that has enabled AC (by writing 1 to ENABLE_1.1_FEATURES bit of AInfo) may need to re-authenticate after sending an AVMUTE to the HDCP Receiver, since the HDCP Receiver may have ignored the HDMI General Control Packet that contained the Set_AVMUTE command, causing the loss of HDCP cipher synchronization.

2.3 HDCP Transmitter State Diagram

The HDCP Transmitter Link State Diagram and HDCP Transmitter Authentication Protocol State Diagram (Figures 2-5 and 2-6) illustrate the operation states of the authentication protocol for an HDCP Transmitter that is not an HDCP Repeater. For HDCP Repeaters, the downstream (HDCP Transmitter) side is covered in Section 2.5.

A variety of events are involved in the transmitter's decision to begin authentication or to transmit video. Some examples of such events may include hot plug detection of an attached HDCP Receiver, completion of certain phases of the operating system, a software request, and mode settings. HDCP receivers are not required to authenticate until presented with a video signal. When an HDCP Receiver acknowledges an I²C register read, it must be ready to

authenticate, and, in the event of authentication failure, must be prepared to process subsequent authentication attempts. The HDCP transmitter should not attempt to authenticate until it has successfully obtained an acknowledged read of an HDCP I²C register. Should the I²C register read or the authentication fail, the HDCP Transmitter must retry periodically, with a period of no more than 2 seconds (preferably much more often). It may cease to attempt authentication only if the HDCP Receiver is clearly disconnected, as with a hot-plug detach.



Note: Transition arrows with no connected source state (e.g. Reset) indicate transitions that can occur from multiple states

Fig. 2-5 HDCP Transmitter Link State Diagram

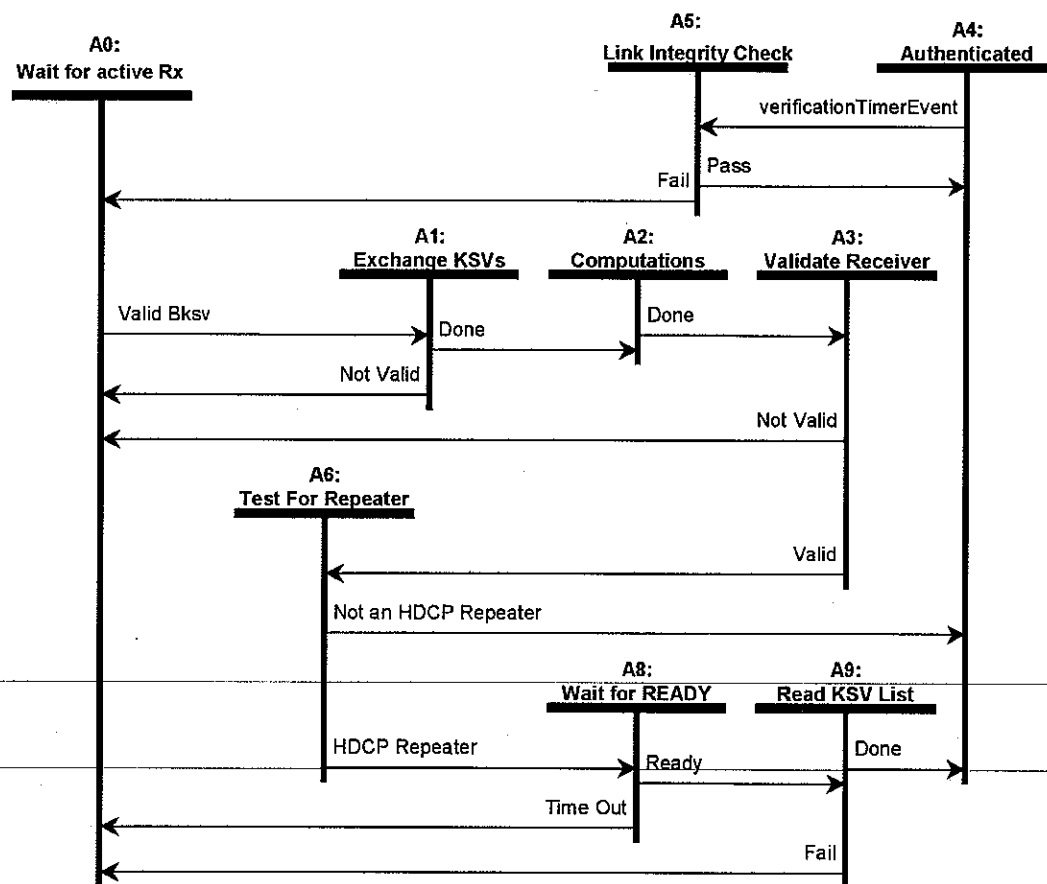


Figure 2-6. HDCP Transmitter Authentication Protocol State Diagram

Transition Any State:H0. Reset conditions at the HDCP Transmitter or loss of Hot Plug Detect (HPD) cause the HDCP Transmitter to enter the No Receiver Attached state. Some TMDS transmitters have the ability to directly sense the presence of a TMDS receiver (Receiver Sense). If this signal is present and indicates the absence of an HDCP Receiver, it should cause a transition to State H0.

Transition H0:H1. The detection of Hot Plug Detect indicates that a sink device is attached and that the EDID ROM is available for reading.

State H1: Read EDID. Whenever HPD is active, the HDCP Transmitter must assume that the receiver is available and displaying an image to the user. Consequently, the transmitter should transmit an image to the screen as soon as feasible. Upon detection of HPD, the HDCP Transmitter reads the EDID to determine the capabilities of the sink device, including whether it is HDMI capable (refer to the HDMI Specification 1.0 for details). If both transmitter and receiver are HDMI-capable, then the TMDS transmitter enters HDMI mode, otherwise, it enters DVI mode.